



FOREIGN OFFICE

# THE CONSTITUTIONS OF ALL COUNTRIES

VOL. I.

The British Empire

LONDON

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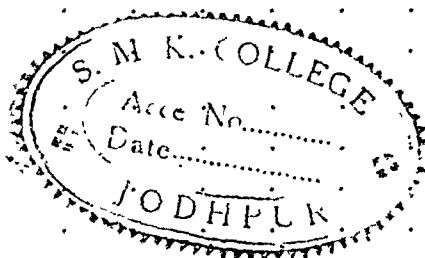
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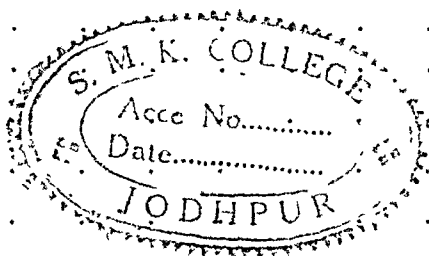


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## Preface

The present publication is designed to serve, in a practical and convenient form, as a manual to students of constitutional law in all countries, and at the same time as an authoritative work of reference to a wider circle interested in the principles of government throughout the world.

Its contents are taken from official sources, which are when possible specified.

Considerations of space and cost have rendered it impossible to reproduce all the documents *in extenso*. A number are printed in full on account of their importance or in order to serve as specimens, but in many cases space is economised by omitting features which are unimportant or common to all instruments of the particular kind. In certain instances the mere indication of legislation has made it possible to dispense with the reproduction of texts.

## Abbreviation

*State Papers*    ..    ..    ..    *British and Foreign State Papers,*  
published annually by His  
Majesty's Stationery Office.

# BRITISH EMPIRE

## *The Statute of Westminster*

Act of the Imperial Parliament to give Effect to certain Resolutions passed by Imperial Conferences held in the years 1926 and 1930.

[22 Geo. V, c. 4.—December 11, 1931.]

*Whereas the delegates of His Majesty's Governments in the United Kingdom, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland, at Imperial Conferences holden at Westminster in the years of our Lord 1926 and 1930 did concur in making the declarations and resolutions set forth in the reports of the said Conferences :*

*And whereas it is meet and proper to set out by way of preamble to this Act that, inasmuch as the Crown is the symbol of the free association of the members of the British Commonwealth of Nations, and as they are united by a common allegiance to the Crown, it would be in accord with the established constitutional position of all the members of the Commonwealth in relation to one another that any alteration in the law touching the succession to the Throne or the royal style and titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom :*

*And whereas it is in accord with the established constitutional position that no law hereafter made by the Parliament of the United Kingdom shall extend to any of the said Dominions as part of the law of that Dominion otherwise than at the request and with the consent of that Dominion :*

*And whereas it is necessary for the ratifying, confirming and establishing of certain of the said declarations and resolutions of the said Conferences that a law be made and enacted in due form by authority of the Parliament of the United Kingdom :*

*And whereas the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland have severally requested and consented to the submission of a measure to the Parliament of the United Kingdom for making such provision with regard to the matters aforesaid as is hereafter in this Act contained :*

*Now, therefore, be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows —*

1 In this Act the expression "Dominion" means any of the following Dominions that is to say, the Dominion of Canada, the Commonwealth of Australia the Dominion of New Zealand the Union of South Africa the Irish Free State and Newfoundland

2 (1) 'The Colonial Laws Validity Act, 1865,'<sup>(1)</sup> shall not apply to any law made after the commencement of this Act by the Parliament of a Dominion

(2) No law and no provision of any law made after the commencement of this Act by the Parliament of a Dominion shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Parliament of a Dominion shall include the power to repeal or amend any such Act, order, rule or regulation in so far as the same is part of the law of the Dominion

3 It is hereby declared and enacted that the Parliament of a Dominion has full power to make laws having extra-territorial operation

4 No Act of Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to a Dominion as part of the law of that Dominion unless it is expressly declared in that Act that that Dominion has requested, and consented to the enactment thereof

5 Without prejudice to the generality of the foregoing provisions of this Act, sections 735 and 736 of "The Merchant Shipping Act, 1894,"<sup>(2)</sup> shall be construed as though reference therein to the Legislature of a British possession did not include reference to the Parliament of a Dominion

6 Without prejudice to the generality of the foregoing provisions of this Act, section 4 of "The Colonial Courts of Admiralty Act 1890"<sup>(3)</sup> (which requires certain laws to be reserved for the signature of His Majesty's pleasure or to contain a suspending clause), and so much of section 7 of that Act as requires the approval of His Majesty in Council to any rules of court for regulating the

(1) 28 & 29 Vict., c. 63 (2) *State Papers*, Vol LXXXVI, page 633

(3) *Ibid*, Vol LXXXII, page 672

practice and procedure of a Colonial Court of Admiralty, shall cease to have effect in any Dominion as from the commencement of this Act.

7. (1) Nothing in this Act shall be deemed to apply to the repeal, amendment or alteration of "The British North America Acts," 1867<sup>(1)</sup> to 1930,<sup>(2)</sup> or any order, rule or regulation made thereunder.

(2) The provisions of section 2 of this Act shall extend to laws made by any of the Provinces of Canada and to the powers of the Legislatures of such Provinces.

(3) The powers conferred by this Act upon the Parliament of Canada or upon the Legislatures of the Provinces shall be restricted to the enactment of laws in relation to matters within the competence of the Parliament of Canada or of any of the Legislatures of the Provinces respectively.

8. Nothing in this Act shall be deemed to confer any power to repeal or alter the constitution or "The Constitution Act" of the Commonwealth of Australia<sup>(3)</sup> or "The Constitution Act" of the Dominion of New Zealand<sup>(4)</sup> otherwise than in accordance with the law existing before the commencement of this Act.

9. (1) Nothing in this Act shall be deemed to authorise the Parliament of the Commonwealth of Australia to make laws on any matter within the authority of the States of Australia, not being a matter within the authority of the Parliament or Government of the Commonwealth of Australia.

(2) Nothing in this Act shall be deemed to require the concurrence of the Parliament or Government of the Commonwealth of Australia in any law made by the Parliament of the United Kingdom with respect to any matter within the authority of the States of Australia, not being a matter within the authority of the Parliament or Government of the Commonwealth of Australia, in any case where it would have been in accordance with the constitutional practice existing before the commencement of this Act that the Parliament of the United Kingdom should make that law without such concurrence.

(3) In the application of this Act to the Commonwealth of Australia the request and consent referred to in section 4 shall mean the request and consent of the Parliament and Government of the Commonwealth.

10. (1) None of the following sections of this Act, that is to say, sections 2, 3, 4, 5 and 6, shall extend to a Dominion to which this section applies as part of the law of that Dominion unless that section is adopted by the Parliament of the Dominion, and any

(1) Page 19.

(2) *State Papers*, Vol. CXXXII, page 57

(3) Page 57.

(4) Page 114.

Act of that Parliament adopting any section of this Act may provide that the adoption shall have effect either from the commencement of this Act or from such later date as is specified in the adopting Act

(2) The Parliament of any such Dominion as aforesaid may at any time revoke the adoption of any section referred to in sub section (1) of this section

(3) The Dominions to which this section applies are the Commonwealth of Australia, the Dominion of New Zealand and Newfoundland

11 Notwithstanding anything in "The Interpretation Act, 1889,"<sup>(1)</sup> the expression "colony" shall not, in any Act of the Parliament of the United Kingdom passed after the commencement of this Act, include a Dominion or any Province or State forming part of a Dominion

12 This Act may be cited as "The Statute of Westminster, 1931 "

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(1) 52 & 53 Vict, c 63

# NORTHERN IRELAND

1. Act of the Parliament of the United Kingdom to provide for the Better Government of Ireland.—December 23, 1920.

Text in *State Papers*, Vol. CXVI, page 3.

2. Act of the Parliament of the United Kingdom modifying the above Act and limiting its Application to Northern Ireland.—December 5, 1922.

Text in *State Papers*, Vol. CXXXVI, page 860.

.. .. .

## I. Government of Ireland Act, 1920.

[10 & 11 Geo. V, c. 67.—December 23, 1920.]

\* \* \*

### *Establishment of Parliaments for Southern Ireland and Northern Ireland and a Council of Ireland*

1. (1) On and after the appointed day there shall be established for Southern Ireland a Parliament to be called "the Parliament of Southern Ireland" consisting of His Majesty, the Senate of Southern Ireland, and the House of Commons of Southern Ireland, and there shall be established for Northern Ireland a Parliament to be called "the Parliament of Northern Ireland" consisting of His Majesty, the Senate of Northern Ireland, and the House of Commons of Northern Ireland.

(2) For the purposes of this Act, Northern Ireland shall consist of the parliamentary counties of Antrim, Armagh, Down, Fermanagh, Londonderry and Tyrone, and the parliamentary boroughs of Belfast and Londonderry, and Southern Ireland shall consist of so much of Ireland as is not comprised within the said parliamentary counties and boroughs.

\* \* \*

### *Power to Establish a Parliament for the whole of Ireland*

\* \* \*

### *Legislative Powers*

4. (1) Subject to the provisions of this Act, the Parliament of Southern Ireland and the Parliament of Northern Ireland shall respectively have power to make laws for the peace, order and good government of Southern Ireland and Northern Ireland with the following limitations, namely, that they shall not have power to make laws except in respect of matters exclusively relating to the

portion of Ireland within their jurisdiction, or some part thereof, and (without prejudice to that general limitation) that they shall not have power to make laws in respect of the following matters in particular, namely —

(i) The Crown or the succession to the Crown, or a regency, or the property of the Crown (including foreshore vested in the Crown), or the Lord Lieutenant, except as respects the exercise of his executive power in relation to Irish services as defined for the purposes of this Act, or

(ii) The making of peace or war, or matters arising from a state of war, or the regulation of the conduct of any portion of His Majesty's subjects during the existence of hostilities between foreign States with which His Majesty is at peace, in relation to those hostilities, or

(iii) The navy, the army, the air force, the territorial force, or any other naval, military, or air force, or the defence of the realm, or any other naval, military or air force matter (including any pensions and allowances payable to persons who have been members of or in respect of service in any such force or their widows or dependants, and provision for the training, education, employment and assistance for the reinstatement in civil life of persons who have ceased to be members of any such force), or

(iv) Treaties, or any relations with foreign States, or relations with other parts of His Majesty's dominions, or matters involving the contravention of treaties or agreements with foreign States or any part of His Majesty's dominions, or offences connected with any such treaties or relations, or procedure connected with the extradition of criminals under any treaty, or the return of fugitive offenders from or to any part of His Majesty's dominions, or

(v) Dignities or titles of honour, or

(vi) Treason, treason felony, alienage, naturalisation, or aliens as such, or domicile, or

(vii) *Trade with any place out of the part of Ireland within their jurisdiction, except so far as trade may be affected by the exercise of the powers of taxation given to the said Parliaments, or by regulations made for the sole purpose of preventing contagious disease, or by steps taken by means of inquiries or agencies out of the part of Ireland within their jurisdiction for the improvement of the trade of that part or for the protection of traders of that part from fraud, the granting of bounties on the export of goods, quarantine, navigation, including merchant shipping (except as respects inland waters the regulation of harbours, and local health regulations), or*

(viii) Submarine cables, or

(ix) Wireless telegraphy, or

(x) Aerial navigation ; or

(xi) Lighthouses, buoys or beacons (except so far as they can consistently with any general Act of the Parliament of the United Kingdom be constructed or maintained by a local harbour authority) ; or

(xii) Coinage ; legal tender ; negotiable instruments (including bank notes) except so far as negotiable instruments may be affected by the exercise of the powers of taxation given to the said Parliaments ; or any change in the standard of weights and measures ; or

(xiii) Trade marks, designs, merchandise marks, copyright, or patent rights ; or

(xiv) Any matter which by this Act is declared to be a reserved matter, so long as it remains reserved.

Any law made in contravention of the limitations imposed by this section shall, so far as it contravenes those limitations, be void.

(2) The limitation on the powers of the said Parliaments to the making of laws with respect to matters exclusively relating to the portion of Ireland within their respective jurisdictions shall not be construed so as to prevent the said Parliaments by identical legislation making laws respecting matters affecting both Southern and Northern Ireland.

5. (1) In the exercise of their power to make laws under this Act neither the Parliament of Southern Ireland nor the Parliament of Northern Ireland shall make a law so as either directly or indirectly to establish or endow any religion, or prohibit or restrict the free exercise thereof, or give a preference, privilege, or advantage, or impose any disability or disadvantage, on account of religious belief or religious or ecclesiastical status, or make any religious belief or religious ceremony a condition of the validity of any marriage, or affect prejudicially the right of any child to attend a school receiving public money without attending the religious instruction at that school, or alter the constitution of any religious body except where the alteration is approved on behalf of the religious body by the governing body thereof, or divert from any religious denomination the fabric of cathedral churches, or, except for the purpose of roads, railways, lighting, water, or drainage works, or other works of public utility upon payment of compensation, any other property, or take any property without compensation.

Any law made in contravention of the restrictions imposed by this sub-section shall, so far as it contravenes those restrictions, be void.

(2) Any existing enactment by which any penalty, disadvantage, or disability is imposed on account of religious belief or on a member of any religious order as such shall, as from the appointed day, cease to have effect in Ireland.



6 (1) Neither the Parliament of Southern Ireland nor the Parliament of Northern Ireland shall have power to repeal or alter any provision of this Act (except as is specially provided by this Act), or of any Act passed by the Parliament of the United Kingdom after the appointed day and extending to the part of Ireland within their jurisdiction, although that provision deals with a matter with respect to which the Parliament has power to make laws

(2) Where any Act of the Parliament of Southern Ireland or the Parliament of Northern Ireland deals with any matter with respect to which that Parliament has power to make laws which is dealt with by any Act of the Parliament of the United Kingdom passed after the appointed day and extending to the part of Ireland within its jurisdiction, the Act of the Parliament of Southern Ireland or the Parliament of Northern Ireland shall be read subject to the Act of the Parliament of the United Kingdom, and so far as it is repugnant to that Act, but no further, shall be void

(3) Any order rule or regulation made in pursuance of, or having the force of, an Act of Parliament of the United Kingdom shall be deemed to be a provision of an Act within the meaning of this section

\* \* \*

### *Executive Authority*

8 (1) The executive power in Southern Ireland and in Northern Ireland shall continue vested in His Majesty the King, and nothing in this Act shall affect the exercise of that power, except as respects Irish services as defined for the purposes of this Act

(2) As respects Irish services, the Lord Lieutenant or other chief executive officer or officers for the time being appointed in his place, on behalf of His Majesty, shall exercise any prerogative or other executive power of His Majesty the exercise of which may be delegated to him by His Majesty

Provided that, if any such power is delegated to the Lord Lieutenant in respect of Southern Ireland or Northern Ireland, the power shall also be delegated to him in respect of Northern Ireland or Southern Ireland

(3) Subject to the provisions of this Act relating to the Council of Ireland, powers so delegated shall be exercised—

\* \* \*

(b) in Northern Ireland, through such departments as may be established by Act of the Parliament of Northern Ireland, or, subject to any alteration by Act of that Parliament, by the Lord Lieutenant,

and the Lord Lieutenant may appoint officers to administer those departments, and those officers shall hold office during the pleasure of the Lord Lieutenant.

(4)

\* \* \*

The persons who are for the time being heads of such departments of the Government of Northern Ireland as may be determined by Act of the Parliament of Northern Ireland, or, in the absence of any such determination, by the Lord Lieutenant, and such other persons (if any) as the Lord Lieutenant may appoint, shall be the Ministers of Northern Ireland :

Provided that—

(a) no such person shall be a Minister of Southern Ireland or a Minister of Northern Ireland unless he is a member of the Privy Council of Ireland ; and

(b) no such person shall hold office as a Minister of Southern Ireland or as a Minister of Northern Ireland for a longer period than 6 months, unless he is or becomes a member of the Parliament of Southern Ireland or of Northern Ireland, as the case may be, but in reckoning those 6 months any time prior to the date of the first meeting of the Parliament of Southern Ireland or of Northern Ireland, as the case may be, or during which that Parliament stands prorogued shall be excluded ; and

(c) any such person not being the head of a department of the Government of Southern Ireland or a department of the Government of Northern Ireland shall hold office as a Minister of Southern Ireland or a Minister of Northern Ireland during the pleasure of the Lord Lieutenant in the same manner as the head of a department of the Government of Southern Ireland or a department of the Government of Northern Ireland holds his office.

(5)

\* \* \*

The persons who are Ministers of Northern Ireland for the time being shall be an executive committee of the Privy Council of Ireland (to be called "the Executive Committee of Northern Ireland") to aid and advise the Lord Lieutenant in the exercise of his executive power in relation to Irish services in Northern Ireland.

(6) In the exercise of power delegated to the Lord Lieutenant in pursuance of this section no preference, privilege, or advantage shall be given to, nor shall any disability or disadvantage be imposed on, any person on account of religious belief except where the nature of the case in which the power is exercised itself involves the giving of such preference, privilege, or advantage, or the imposing of such a disability or disadvantage.

(7) The seats of the Governments of Southern Ireland and Northern Ireland shall be at Dublin and Belfast, respectively, or such places as the Parliaments of Southern Ireland and Northern Ireland respectively may determine

(8) For the purposes of this Act, " Irish services " in relation to Southern Ireland and Northern Ireland respectively are all public services in connection with the administration of civil government in Southern Ireland and Northern Ireland, except the administration of matters with respect to which the Parliament of Southern Ireland and the Parliament of Northern Ireland have under the provisions hereinbefore contained no power to make laws, including in this exception all public services in connection with the administration of matters by this Act declared to be reserved matters so long as they continue to be reserved , and the public services in connection with the matters so reserved are in this Act referred to as " reserved services "

\* \* \*

### *Provisions as to Parliaments of Southern and Northern Ireland*

11 (1) There shall be a session of the Parliament of Southern Ireland and of the Parliament of Northern Ireland, once at least in every year, so that 12 months shall not intervene between the last sitting of either Parliament in one session and their first sitting in the next session

(2) The Lord Lieutenant shall, in His Majesty's name, summon, prorogue, and dissolve the Parliament of Southern Ireland and the Parliament of Northern Ireland

12 The Lord Lieutenant shall give and withhold the assent of His Majesty to bills passed by the Senate and House of Commons of Southern Ireland or the Senate and House of Commons of Northern Ireland, and to orders of the Council of Ireland, subject to the following limitations —

(1) He shall comply with any instructions given by His Majesty in respect of any such bill or order , and

(2) He shall, if so directed by His Majesty, reserve any such bill or order for the signification of His Majesty's pleasure, and a bill or order so reserved shall not have any force unless and until within one year from the day on which it was presented to the Lord Lieutenant for His Majesty's assent, the Lord Lieutenant makes known that it has received His Majesty's assent.

13 (1) \* \* \*

(2) The Senate of Northern Ireland shall be constituted as provided in the third schedule to this Act

(3) The provisions contained in the fourth schedule to this Act shall have effect with respect to the nomination, election and term of office of members of the Senates of Southern Ireland and Northern Ireland.

14. (1) \* \* \*

(2) The House of Commons of Northern Ireland shall consist of 52 members returned by the constituencies in Ireland named in part II of the fifth schedule to this Act, and the number of members to be returned by each such constituency shall be the number mentioned in the second column of that part.

(3) The members shall be elected by the same electors and in the same manner as members returned by constituencies in Ireland to serve in the Parliament of the United Kingdom, except that at any contested election of the full number of members the election shall be according to the principle of proportional representation, each elector having one transferable vote, as defined by "The Representation of the People Act, 1918,"<sup>(1)</sup> and His Majesty in Council shall have the same power of making regulations in respect thereto as he has under sub-section (3) of section 20 of that Act, and that sub-section shall apply accordingly.

(4) The House of Commons of Southern Ireland and the House of Commons of Northern Ireland when summoned shall, unless sooner dissolved, have continuance for 5 years from the day on which the summons directs the House to meet and no longer.

(5) After 3 years from the day of the first meeting of the Parliament of Southern Ireland or Northern Ireland, that Parliament may alter the qualification and registration of the electors, the law relating to elections and the questioning of elections, the constituencies, and the distribution of the members among the constituencies, provided that in any new distribution the number of the members shall not be altered, and due regard shall be had to the population of the constituencies other than University constituencies.

\* \* \*

16. (1) Bills imposing taxation or appropriating revenue or moneys shall originate only in the House of Commons of Southern Ireland or Northern Ireland, but a bill shall not be taken to impose taxation or to appropriate revenue or moneys by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the payment or appropriation of fees for licences or fees for services under the bill.

(2) The House of Commons of Southern Ireland or Northern Ireland shall not adopt or pass any vote, resolution, address or bill for the appropriation for any purpose of any part of the public

<sup>(1)</sup> 7 & 8 Geo. V, c. 64.

revenue of Southern Ireland or Northern Ireland or of any tax, except in pursuance of a recommendation from the Lord Lieutenant in the session in which the vote, resolution, address or bill is proposed

(3) The Senate of Southern Ireland or Northern Ireland may not amend any bills so far as they impose taxation or appropriate revenue or moneys for the services of the Government of Southern Ireland or Northern Ireland or for services administered by the Council of Ireland, and may not amend any bill so as to increase any proposed charges or burdens on the people

(4) Any bill which appropriates revenue or moneys for the ordinary annual services of the Government of Southern Ireland or Northern Ireland, or services administered by the Council of Ireland shall deal only with that appropriation

17 (1) If the House of Commons of Southern Ireland or Northern Ireland pass any public bill, which is sent up to the Senate of Southern Ireland or Northern Ireland at least one month before the end of the session, and the Senate of Southern or Northern Ireland reject or fail to pass it or pass it with amendments to which the House of Commons will not agree, and if the House of Commons in the next session again pass the bill with or without any amendments which have been made or agreed to by the Senate, and the Senate reject or fail to pass it or pass it with amendments to which the House of Commons will not agree, the Lord Lieutenant may, during that session convene a joint sitting of the members of such two Houses

(2) The members present at any such joint sitting may deliberate and shall vote together upon the bill as last proposed by the House of Commons and upon the amendments, if any, which have been made therein by one House and not agreed to by the other, and any such amendments which are affirmed by a majority of the total number of members of such two Houses present at such sitting shall be taken to have been carried

(3) If the bill with the amendments, if any, so taken to have been carried is affirmed by a majority of the total number of members of the two Houses present at such sitting, it shall be taken to have been duly passed by both Houses

Provided that, if the Senate of Southern Ireland or Northern Ireland shall reject or fail to pass any bill dealing with the imposition of taxation or the appropriation of revenue or moneys for the public service, such joint sitting may be convened during the same session in which the Senate so reject or fail to pass such bill

18 (1) The powers, privileges, and immunities of the Senate and House of Commons of Southern Ireland and the Senate and House of Commons of Northern Ireland, and of the members and of the committees thereof shall be such as may be defined by Act of the

Parliament in question, and, until so defined, shall be those held and enjoyed by the Commons House of Parliament of the United Kingdom and its members and committees at the date of the passing of this Act.

(2) The law for the time being in force relating to the qualification and disqualification of the members of the Commons House of Parliament of the United Kingdom, and the taking of any oath required to be taken by a member of that House, shall, save as otherwise provided by this Act, apply to the members of the Senate and House of Commons of Southern Ireland and members of the Senate and House of Commons of Northern Ireland.

(3) A person shall not be disqualified for being a member of the Senate or House of Commons of Southern Ireland or a member of the Senate or House of Commons of Northern Ireland by reason only that he is a peer, whether of the United Kingdom, Great Britain, England, Scotland or Ireland.

(4) A member of the House of Commons of Southern Ireland or Northern Ireland shall be incapable of being chosen or elected or of sitting as a member of the Senate of Southern Ireland or Northern Ireland, and a member of the Senate of Southern Ireland or Northern Ireland shall be incapable of being chosen or elected or of sitting as a member of the House of Commons of Southern Ireland or Northern Ireland; but a Minister of Southern Ireland or Northern Ireland who is a member of either House of the Parliament of Southern Ireland or Northern Ireland shall have the right to sit and speak in both Houses, but shall vote only in the House of which he is a member.

(5) A member of the Senate or House of Commons of Southern Ireland or Northern Ireland may resign his seat by giving notice of resignation to the person and in the manner directed by standing orders of the House, or, if there is no such direction, by notice in writing of resignation sent to the Lord Lieutenant, and his seat shall become vacant on notice of resignation being given.

(6) The powers of the Council of Ireland or the Senate or House of Commons of Southern Ireland or Northern Ireland shall not be affected by any vacancy therein, or by any defect in the nomination, election, or qualification of any member thereof.

(7) His Majesty may, by Order in Council, declare that the holders of the offices in the executive of Southern Ireland and Northern Ireland named in the Order shall not be disqualified for being members of the Senate or House of Commons of Southern Ireland and Northern Ireland respectively by reason of holding office under the Crown, and, except as otherwise provided by Act of the Parliament of Southern Ireland or Northern Ireland, the Order shall have effect as if it were enacted in this Act, and on

acceptance of any such office the seat of any such person in the House of Commons of Southern Ireland or Northern Ireland shall not be vacated

### *Irish Representation in the House of Commons*

19 Unless and until the Parliament of the United Kingdom otherwise determine the following provisions shall have effect —

(a) After the appointed day the number of members to be returned by constituencies in Ireland to serve in the Parliament of the United Kingdom shall be 46 and the constituencies returning those members shall (in lieu of the existing constituencies) be the constituencies named in parts I and II of the fifth schedule\* to this Act and the number of members to be returned by each such constituency shall be the number mentioned in the third column of those parts of that schedule

(b) The election laws and the laws relating to the qualification of parliamentary electors shall not, so far as they relate to elections of members returned by constituencies in Ireland to serve in the Parliament of the United Kingdom be altered by the Parliament of Southern Ireland or Northern Ireland

(c) On the appointed day, the members returned by constituencies in Ireland to serve in the Parliament of the United Kingdom shall vacate their seats, and writs shall as soon as conveniently may be be issued for the purpose of holding an election of members to serve in the Parliament of the United Kingdom for the constituencies mentioned in parts I and II of the fifth schedule to this Act

\*                      \*                      \*

### *Provisions as to Courts of Law and Judges*

38 The Supreme Court of Judicature in Ireland shall cease to exist, and there shall be established in Ireland the following courts, that is to say, a court having jurisdiction in Southern Ireland, to be called ' the Supreme Court of Judicature of Southern Ireland,' a court having jurisdiction in Northern Ireland, to be called " the Supreme Court of Judicature of Northern Ireland," and a court having appellate jurisdiction throughout the whole of Ireland, to be called ' the High Court of Appeal for Ireland "

\*                      \*                      \*

40 (1) The Supreme Court of Judicature of Northern Ireland shall consist of two divisions, one of which under the name of " His Majesty's High Court of Justice in Northern Ireland " shall, in Northern Ireland have and exercise all such jurisdiction as is now exercised by His Majesty's High Court of Justice in Ireland and by the judges of that court (including the land judges), and the other

of which, under the name of " His Majesty's Court of Appeal in Northern Ireland " shall, in Northern Ireland, have and exercise all such jurisdiction as is now exercised by His Majesty's Court of Appeal in Ireland.

(2) The High Court of Justice in Northern Ireland and the Court of Appeal in Northern Ireland shall, subject to the provisions of part III of the seventh schedule to this Act, be constituted in manner provided by part II of that schedule.

\* \* \*

53. Any decision of the House of Lords or of the Judicial Committee of the Privy Council as to the validity of any law made by or having the effect of an Act of the Parliament of Southern Ireland or Northern Ireland, and any decision of the Judicial Committee of the Privy Council on any other question of law which is to be determined by the Judicial Committee of the Privy Council under this Act shall be final and conclusive and binding upon all courts.

\* \* \*

### *General*

\* \* \*

75. Notwithstanding the establishment of the Parliaments of Southern and Northern Ireland, or the Parliament of Ireland, or anything contained in this Act, the supreme authority of the Parliament of the United Kingdom shall remain unaffected and undiminished over all persons, matters, and things in Ireland and every part thereof.

\* \* \*

### SCHEDULES

\* \* \*

### *Third Schedule*

#### COMPOSITION OF SENATE OF NORTHERN IRELAND

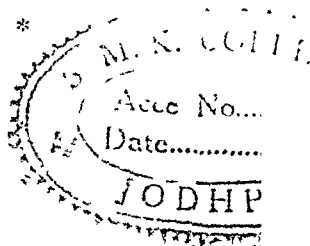
##### *Part I—Offices entitling Holders to be Senators*

The Lord Mayor of Belfast.

The Mayor of Londonderry.

##### *Part II—Elected Senators*

24 senators to be elected by the members of the House of Commons of Northern Ireland.





*Fourth Schedule*PROVISIONS WITH RESPECT TO THE NOMINATION, ELECTION  
AND TERM OF OFFICE OF SENATORS

1 His Majesty may, by Orders in Council, make such provisions as may appear necessary or proper with respect to the election of senators and in particular with respect to the making and keeping of lists of the electors specified in the third part of the second schedule the issue of writs, the modes of service, and the returns to be made to such writs

2 (a) The term of office of every elected member of the Senate of Northern Ireland shall be 8 years provided that one half of such members shall retire at the end of every 4th year, the members to retire at the end of the first 4 years being selected by lot

\* \* \*

(c) The term of office of a senator shall not be affected by a dissolution of the Parliament of Southern Ireland or Northern Ireland

(d) Senators shall retire at the end of their term of office and their seats shall be filled by new elections

3 If the place of an elected senator becomes vacant before the expiration of his term of office by death, resignation, incapacity, or otherwise the Lord Lieutenant shall cause a writ or writs to be issued for the election by the body by whom such senator was elected of a senator in his place, and, if the place of a nominated senator so becomes vacant, the Lord Lieutenant shall nominate a new senator in his place, but any senator so elected or nominated to fill a casual vacancy shall hold office only so long as the senator in whose stead he is elected or nominated would have held office

4 At any contested election of four or more members of the Senate of Southern Ireland or of Northern Ireland, the election shall be according to the principle of proportional representation, each elector having one transferable vote as defined by "The Representation of the People Act, 1918," and His Majesty in Council shall have the same power of making regulations in respect thereto as he has under sub section (3) of section 20 of that Act and that sub section shall apply accordingly

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## 2. Irish Free State (Consequential Provisions) Act, 1922.

[13 Geo. V, c. 2.—December 5, 1922.]

\* \* \*

1. (1) Subject to the provisions of the first schedule to this Act, "The Government of Ireland Act, 1920,"<sup>(1)</sup> shall cease to apply to any part of Ireland other than Northern Ireland, and in the event of such an address as is mentioned in article 12 of the articles of agreement for a treaty between Great Britain and Ireland<sup>(2)</sup> set forth in the schedule to "The Irish Free State (Agreement) Act, 1922,"<sup>(3)</sup> being presented to His Majesty by both Houses of the Parliament of Northern Ireland within the time mentioned in that article, "The Government of Ireland Act, 1920," and the other enactments mentioned in the first schedule to this Act shall, as from the date of the presentation of such address, have effect subject to the modifications set out in that schedule.

\* \* \*

### *First Schedule*

MODIFICATION OF "THE GOVERNMENT OF IRELAND ACT, 1920," ETC.

1. (1) There shall be a Governor of Northern Ireland, and the provisions of "The Government of Ireland Act, 1920," with respect to the Lord Lieutenant shall apply to the Governor of Northern Ireland and in "The Government of Ireland Act, 1920" (hereinafter referred to as "the principal Act"), and in any other enactment references to the Lord Lieutenant shall, in their application to Northern Ireland, be construed as references to the Governor of Northern Ireland.

\* \* \*

2. (1) There shall be a Privy Council of Northern Ireland, and anything which, prior to the first appointment of a Governor of Northern Ireland, might be done by, to, before, or with the advice or concurrence of the Privy Council of Ireland or any committee thereof may, as respects Northern Ireland after such appointment, be done by, to, before, or with the advice or concurrence of the Privy Council of Northern Ireland or a corresponding committee of that Council.

(2) The persons who are to be members of the Privy Council of Northern Ireland shall be from time to time chosen and summoned by the Governor of Northern Ireland and sworn in as Privy Counsellors, and the members may from time to time be removed by the Governor of Northern Ireland.

<sup>(1)</sup> Page 5.      <sup>(2)</sup> *State Papers*, Vol. CXVI, page 87.

<sup>(3)</sup> *Ibid.*, Vol. CXVI, page 85.

(3) In the application of the principal Act to Northern Ireland references to the Privy Council of Northern Ireland shall be substituted for references to the Privy Council of Ireland, and after the expiration of one month from the first appointment of a Governor of Northern Ireland no person shall be a Minister of Northern Ireland unless he is a member of the Privy Council of Northern Ireland

(4) There shall be a Great Seal of Northern Ireland which shall be kept by the Governor of Northern Ireland and shall, after the first appointment of such Governor, be used for all matters in Northern Ireland for which the Great Seal of Ireland was theretofore used. Until a Great Seal of Northern Ireland is provided the private seal of the Governor of Northern Ireland may be used as that Great Seal

\* \* \*

## DOMINION OF CANADA

1. Act of the Imperial Parliament for the Union of Canada, Nova Scotia and New Brunswick.—March 29, 1867.

Text in *State Papers*, Vol. LVII, page 413.

### *Amendments*

#### ACTS OF THE IMPERIAL PARLIAMENT :

July 19, 1875. . . . Text in *State Papers*, Vol. LXVI, page 233.

August 9, 1907.

May 19, 1915. . . . . Text in *State Papers*, Vol. CIX, page 2.

July 10, 1930. . . Text in *State Papers*, Vol. CXXXII, page 57.

2. Act of the Imperial Parliament respecting the Establishment of Provinces.—June 29, 1871.

Text in *State Papers*, Vol. LXI, page 1347.

3. Act of the Imperial Parliament respecting the Representation in the Parliament of Canada of Territories forming Part of the Dominion but not included in any Province.—June 25, 1886.      Text in *State Papers*, Vol. LXXVII, page 981.

4. Act of the Imperial Parliament to make further Provision with respect to the Sums to be paid by the Dominion to the several Provinces.—August 9, 1907.

5. Letters Patent constituting the Office of Governor-General and Commander-in-Chief.—Westminster, March 23, 1931.

Text in *State Papers*, Vol. CXXXIV, page 68.

### *Amendment*

#### LETTERS PATENT :

Westminster, September 25, 1935. . . Text in *Statutory Rules and Orders*, 1935, page 1785.

6. Royal Instructions to the Governor-General and Commander-in-Chief.—St. James's, March 23, 1931.

. . . . .

- I. British North America Act, 1867 (as amended 1875, 1907, 1915 and 1930).

[30 Vict., c. 3.—March 29, 1867]

*Whereas the Provinces of Canada, Nova Scotia, and New Brunswick have expressed their desire to be federally united into one Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a constitution similar in principle to that of the United Kingdom*

*And whereas such a union would conduce to the welfare of the Provinces and promote the interests of the British Empire*

*And whereas on the establishment of the union by authority of Parliament it is expedient, not only that the constitution of the legislative authority in the Dominion be provided for, but also that the nature of the Executive Government therein be declared*

*And whereas it is expedient that provision be made for the eventual admission into the union of other parts of British North America*

*Be it therefore enacted and declared by the Queen's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, as follows*

### I —PRELIMINARY

1 This Act may be cited as "The British North America Act, 1867"

2 The provisions of this Act referring to Her Majesty the Queen extend also to the heirs and successors of Her Majesty, Kings and Queens of the United Kingdom of Great Britain and Ireland

### II —UNION

3 It shall be lawful for the Queen, by and with the advice of Her Majesty's most Honourable Privy Council, to declare by proclamation<sup>(1)</sup> that, on and after a day therein appointed not being more than 6 months after the passing of this Act, the Provinces of Canada, Nova Scotia and New Brunswick shall form and be one Dominion under the name of "Canada", and on and after that day those three Provinces shall form and be one Dominion under that name accordingly

4 The subsequent provisions of this Act shall, unless it is otherwise expressed or implied, commence and have effect on and after the union, that is to say, on and after the day appointed for the union taking effect in the Queen's proclamation, and in the same provisions, unless it is otherwise expressed or implied, the name "Canada" shall be taken to mean Canada as constituted under this Act

5 Canada shall be divided into four Provinces, named "Ontario," "Quebec," "Nova Scotia" and "New Brunswick"

6 The parts of the Province of Canada (as it exists at the passing of this Act) which formerly constituted respectively the Provinces of Upper Canada and Lower Canada shall be deemed to be severed, and shall form two separate Provinces. The part which formerly

<sup>(1)</sup> The day appointed by proclamation of May 22, 1867 (*State Papers* Vol. LVIII, page 524), was July 1, 1867

constituted the Province of Upper Canada shall constitute the Province of Ontario ;<sup>(1)</sup> and the part which formerly constituted the Province of Lower Canada shall constitute the Province of Quebec.

7. The Provinces of Nova Scotia and New Brunswick shall have the same limits as at the passing of this Act.

8. In the general census of the population of Canada which is hereby required to be taken in the year 1871, and in every tenth year thereafter, the respective populations of the four Provinces shall be distinguished.

### III.—EXECUTIVE POWER

9. The Executive Government and authority of and over Canada is hereby declared to continue and be vested in the Queen.

10. The provisions of this Act referring to the Governor-General extend and apply to the Governor-General for the time being of Canada, or other the Chief Executive Officer or Administrator for the time being carrying on the Government of Canada on behalf and in the name of the Queen, by whatever title he is designated.

11. There shall be a Council to aid and advise in the Government of Canada, to be styled " the Queen's Privy Council for Canada " ; and the persons who are to be members of that Council shall be from time to time chosen and summoned by the Governor-General and sworn in as Privy Councillors, and members thereof may be from time to time removed by the Governor-General.

12. All powers, authorities and functions which under any Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of Upper Canada, Lower Canada, Canada, Nova Scotia or New Brunswick, are at the union vested in or exercisable by the respective Governors or Lieutenant-Governors of those Provinces, with the advice, or with the advice and consent, of the respective Executive Councils thereof, or in conjunction with those Councils, or with any number of members thereof, or by those Governors or Lieutenant-Governors individually, shall, as far as the same continue in existence and capable of being exercised after the union in relation to the Government of Canada, be vested in and exercisable by the Governor-General, with the advice or with the advice and consent of or in conjunction with the Queen's Privy Council for Canada, or any members thereof, or by the Governor-General individually, as the case requires, subject nevertheless (except with respect to

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(1) The boundaries of Ontario were declared by " The Canada (Ontario Boundary) Act, 1889," of the Imperial Parliament (*State Papers*, Vol. LXXXI, page 655).

such as exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland) to be abolished or altered by the Parliament of Canada

13 The provisions of this Act referring to the Governor-General in Council shall be construed as referring to the Governor-General acting by and with the advice of the Queen's Privy Council for Canada

14 It shall be lawful for the Queen if Her Majesty thinks fit, to authorise the Governor-General from time to time to appoint any person or any persons jointly or severally to be his deputy or deputies within any part or parts of Canada, and in that capacity to exercise during the pleasure of the Governor-General such of the powers, authorities and functions of the Governor General as the Governor General deems it necessary or expedient to assign to him or them, subject to any limitations or directions expressed or given by the Queen, but the appointment of such a deputy or deputies shall not affect the exercise by the Governor General himself of any power authority or function

15 The command-in chief of the land and naval militia and of all naval and military forces, of and in Canada, is hereby declared to continue and be vested in the Queen

16 Until the Queen otherwise directs, the seat of Government of Canada shall be Ottawa

#### IV—LEGISLATIVE POWER

17 There shall be one Parliament for Canada consisting of the Queen an Upper House styled "the Senate" and the House of Commons

18 The privileges, immunities and powers to be held enjoyed and exercised by the Senate and by the House of Commons and by the members thereof respectively shall be such as are from time to time defined by Act of the Parliament of Canada, but so that any Act of the Parliament of Canada defining such privileges, immunities and powers shall not confer any privileges, immunities or powers exceeding those at the passing of such Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland and by the members thereof

19 The Parliament of Canada shall be called together not later than 6 months after the union

20 There shall be a session of the Parliament of Canada once at least in every year, so that 12 months shall not intervene between the last sitting of the Parliament in one session and its first sitting in the next session

*The Senate*

21. The Senate shall, subject to the provisions of this Act, consist of 96 members, who shall be styled "senators."

22<sup>(1)</sup>. In relation to the constitution of the Senate Canada shall be deemed to consist of three divisions :

(1) Ontario ;

(2) Quebec ;

(3) The Maritime Provinces, Nova Scotia and New Brunswick ; which three divisions shall (subject to the provisions of this Act) be equally represented in the Senate as follows : Ontario by 24 senators ; Quebec by 24 senators ; and the Maritime Provinces by 24 senators, 12 thereof representing Nova Scotia, and 12 thereof representing New Brunswick.

In the case of Quebec each of the 24 senators representing that Province shall be appointed for one of the 24 electoral divisions of Lower Canada specified in schedule A to chapter 1 of "The Consolidated Statutes of Canada."

23. The qualifications of a senator shall be as follows :

(1) He shall be of the full age of 30 years.

(2) He shall be either a natural-born subject of the Queen, or a subject of the Queen naturalised by an Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of one of the Provinces of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick, before the union, or of the Parliament of Canada after the union.

(3) He shall be legally or equitably seised as of freehold for his own use and benefit of lands or tenements held in free and common socage, or seised or possessed for his own use and benefit of lands or tenements held in franc-alien or in roture, within the Province for which he is appointed, of the value of 4,000 dollars,

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(1) Amended by section 1 (1) (ii) of "The British North America Act, 1915," which reads as follows:—"The divisions of Canada in relation to the constitution of the Senate provided for by section 22 of the said Act are increased from three to four, the fourth division to comprise the Western Provinces of Manitoba, British Columbia, Saskatchewan, and Alberta, which four divisions shall (subject to the provisions of the said Act and of this Act) be equally represented in the Senate, as follows:—Ontario by 24 senators; Quebec by 24 senators; the Maritime Provinces and Prince Edward Island by 24 senators, 10 thereof representing Nova Scotia, 10 thereof representing New Brunswick, and 4 thereof representing Prince Edward Island; the Western Provinces by 24 senators, 6 thereof representing Manitoba, 6 thereof representing British Columbia, 6 thereof representing Saskatchewan and 6 thereof representing Alberta."



over and above all rents, dues, debts, charges, mortgages and incumbrances due or payable out of or charged on or affecting the same

(4) His real and personal property shall be together worth 4,000 dollars over and above his debts and liabilities

(5) He shall be resident in the Province for which he is appointed

(6) In the case of Quebec he shall have his real property qualification in the electoral division for which he is appointed, or shall be resident in that division

24 The Governor General shall from time to time, in the Queen's name by instrument under the Great Seal of Canada, summon qualified persons to the Senate, and, subject to the provisions of this Act, every person so summoned shall become and be a member of the Senate and a senator

25 Such persons shall be first summoned to the Senate as the Queen by warrant under Her Majesty's Royal Sign Manual thinks fit to approve and their names shall be inserted in the Queen's proclamation of union

26 If at any time on the recommendation of the Governor-General the Queen thinks fit to direct that four or eight members be added to the Senate, the Governor-General may by summons to four or eight qualified persons (as the case may be), representing equally the four divisions of Canada, add to the Senate accordingly

27 In case of such addition being at any time made, the Governor-General shall not summon any person to the Senate, except on a further like direction by the Queen on the like recommendation, until each of the four divisions of Canada is represented by 24 senators and no more

28 The number of senators shall not at any time exceed 104 <sup>(1)</sup>

29 A senator shall, subject to the provisions of this Act, hold his place in the Senate for life

30 A senator may by writing under his hand addressed to the Governor General resign his place in the Senate, and thereupon the same shall be vacant

31 The place of a senator shall become vacant in any of the following cases

(1) If for two consecutive sessions of the Parliament he fails to give his attendance in the Senate

(2) If he takes an oath or makes a declaration or acknowledgment of allegiance, obedience or adherence to a foreign Power, or does an act whereby he becomes a subject or citizen, or entitled to the rights or privileges of a subject or citizen, of a foreign Power

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<sup>(1)</sup> Section 1 (v1) of "The British North America Act, 1915", provides, in case Newfoundland is admitted to the Union for a normal number of 102 and a maximum number of 110 senators

(3) If he is adjudged bankrupt or insolvent, or applies for the benefit of any law relating to insolvent debtors, or becomes a public defaulter.

(4) If he is attainted of treason or convicted of felony or of any infamous crime.

(5) If he ceases to be qualified in respect of property or of residence; provided, that a senator shall not be deemed to have ceased to be qualified in respect of residence by reason only of his residing at the seat of the Government of Canada while holding an office under that Government requiring his presence there.

32. When a vacancy happens in the Senate by resignation, death, or otherwise, the Governor-General shall by summons to a fit and qualified person fill the vacancy.

33. If any question arises respecting the qualification of a senator or a vacancy in the Senate the same shall be heard and determined by the Senate.

34. The Governor-General may from time to time, by instrument under the Great Seal of Canada, appoint a senator to be Speaker of the Senate, and may remove him and appoint another in his stead.

35. Until the Parliament of Canada otherwise provides, the presence of at least 15 senators, including the Speaker, shall be necessary to constitute a meeting of the Senate for the exercise of its powers.

36. Questions arising in the Senate shall be decided by a majority of voices, and the Speaker shall in all cases have a vote, and when the voices are equal the decision shall be deemed to be in the negative.

### *The House of Commons*

37. The House of Commons shall, subject to the provisions of this Act, consist of 181 members, of whom 82 shall be elected for Ontario, 65 for Quebec, 19 for Nova Scotia, and 15 for New Brunswick.

38. The Governor-General shall from time to time, in the Queen's name, by instrument under the Great Seal of Canada, summon and call together the House of Commons.

39. A senator shall not be capable of being elected or of sitting or voting as a member of the House of Commons.

40 Until the Parliament of Canada otherwise provides, Ontario, Quebec, Nova Scotia and New Brunswick shall for the purposes of the election of members to serve in the House of Commons, be divided into electoral districts as follows

### 1—ONTARIO

Ontario shall be divided into the counties ridings of counties cities parts of cities and towns enumerated in the first schedule to this Act, each whereof shall be an electoral district each such district as numbered in that schedule being entitled to return one member

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### 2—QUEBEC

Quebec shall be divided into 65 electoral districts composed of the 65 electoral divisions into which Lower Canada is at the passing of this Act divided under chapter 2 of "The Consolidated Statutes of Canada," chapter 75 of "The Consolidated Statutes for Lower Canada" and the Act of the Province of Canada of the 23rd year of the Queen chapter 1, or any other Act amending the same in force at the union so that each such electoral division shall be for the purposes of this Act an electoral district entitled to return one member

### 3—NOVA SCOTIA

Each of the 18 counties of Nova Scotia shall be an electoral district The county of Halifax shall be entitled to return 2 members and each of the other counties one member

### 4—NEW BRUNSWICK

Each of the 14 counties into which New Brunswick is divided including the city and county of St John shall be an electoral district The city of St John shall also be a separate electoral district Each of those 15 electoral districts shall be entitled to return one member

41 Until the Parliament of Canada otherwise provides all laws in force in the several Provinces at the union relative to the following matters or any of them namely—the qualifications and disqualifications of persons to be elected or to sit or vote as members of the House of Assembly or Legislative Assembly in the several Provinces the voters at elections of such members the oaths to be taken by voters the returning officers their powers and duties the proceedings at elections the periods during which elections may be continued, the trial of controverted elections and proceedings incident thereto, the vacating of seats of members, and the execution of new writs in case of seats vacated otherwise than by dissolution—shall respectively apply to elections of members to serve in the House of Commons for the same several Provinces

Provided that, until the Parliament of Canada otherwise provides, at any election for a member of the House of Commons for the district of Algoma, in addition to persons qualified by the law of the Province of Canada to vote, every male British subject, aged 21 years or upwards, being a householder, shall have a vote.

42. For the first election of members to serve in the House of Commons the Governor-General shall cause writs to be issued by such person, in such form, and addressed to such returning officers as he thinks fit.

The person issuing writs under this section shall have the like powers as are possessed at the union by the officers charged with the issuing of writs for the election of members to serve in the respective House of Assembly or Legislative Assembly of the Province of Canada, Nova Scotia or New Brunswick; and the returning officers to whom writs are directed under this section shall have the like powers as are possessed at the union by the officers charged with the returning of writs for the election of members to serve in the same respective House of Assembly or Legislative Assembly.

43. In case a vacancy in the representation in the House of Commons of any electoral district happens before the meeting of the Parliament, or after the meeting of the Parliament before provision is made by the Parliament in this behalf, the provisions of the last foregoing section of this Act shall extend and apply to the issuing and returning of a writ in respect of such vacant district.

44. The House of Commons on its first assembling after a general election shall proceed with all practicable speed to elect one of its members to be Speaker.

45. In case of a vacancy happening in the office of Speaker by death, resignation or otherwise, the House of Commons shall with all practicable speed proceed to elect another of its members to be Speaker.

46. The Speaker shall preside at all meetings of the House of Commons.

47. Until the Parliament of Canada otherwise provides, in case of the absence for any reason of the Speaker from the chair of the House of Commons for a period of 48 consecutive hours, the House may elect another of its members to act as Speaker, and the member so elected shall during the continuance of such absence of the Speaker have and execute all the powers, privileges and duties of Speaker.

48. The presence of at least 20 members of the House of Commons shall be necessary to constitute a meeting of the House for the exercise of its powers, and for that purpose the Speaker shall be reckoned as a member.

49 Questions arising in the House of Commons shall be decided by a majority of voices other than that of the Speaker, and when the voices are equal, but not otherwise, the Speaker shall have a vote

50 Every House of Commons shall continue for 5 years from the day of the return of the writs for choosing the House (subject to be sooner dissolved by the Governor-General), and no longer

51 On the completion of the census in the year 1871, and of each subsequent decennial census, the representation of the four Provinces shall be re-adjusted by such authority, in such manner, and from such time as the Parliament of Canada from time to time provides, subject and according to the following rules

(1) Quebec shall have the fixed number of 65 members

(2) There shall be assigned to each of the other Provinces such a number of members as will bear the same proportion to the number of its population (ascertained at such census) as the number 65 bears to the number of the population of Quebec (so ascertained)

(3) In the computation of the number of members for a Province a fractional part not exceeding one half of the whole number requisite for entitling the Province to a member shall be disregarded but a fractional part exceeding one-half of that number shall be equivalent to the whole number

(4) On any such re adjustment the number of members for a Province shall not be reduced unless the proportion which the number of the population of the Province bore to the number of the aggregate population of Canada at the then last preceding re adjustment of the number of members for the Province is ascertained at the then latest census to be diminished by one twentieth part or upwards

(5) Such re adjustment shall not take effect until the termination of the then existing Parliament

51A Notwithstanding anything in this Act, a Province shall always be entitled to a number of members in the House of Commons not less than the number of senators representing such Province

52 The number of members of the House of Commons may be from time to time increased by the Parliament of Canada provided the proportionate representation of the Provinces prescribed by this Act is not thereby disturbed

### *Money Votes Royal Assent*

53 Bills for appropriating any part of the public revenue, or for imposing any tax or impost, shall originate in the House of Commons

54. It shall not be lawful for the House of Commons to adopt or pass any vote, resolution, address or bill for the appropriation of any part of the public revenue, or of any tax or impost, to any purpose that has not been first recommended to that House by message of the Governor-General in the session in which such vote, resolution, address or bill is proposed.

55. Where a bill passed by the Houses of the Parliament is presented to the Governor-General for the Queen's assent, he shall declare, according to his discretion, but subject to the provisions of this Act and to Her Majesty's instructions, either that he assents thereto in the Queen's name, or that he withholds the Queen's assent, or that he reserves the bill for the signification of the Queen's pleasure.

56. Where the Governor-General assents to a bill in the Queen's name, he shall by the first convenient opportunity send an authentic copy of the Act to one of Her Majesty's Principal Secretaries of State, and if the Queen in Council within 2 years after receipt thereof by the Secretary of State thinks fit to disallow the Act, such disallowance (with a certificate of the Secretary of State of the day on which the Act was received by him) being signified by the Governor-General, by speech or message to each of the Houses of the Parliament or by proclamation, shall annul the Act from and after the day of such signification.

57. A bill reserved for the signification of the Queen's pleasure shall not have any force unless and until, within 2 years from the day on which it was presented to the Governor-General for the Queen's assent, the Governor-General signifies, by speech or message to each of the Houses of the Parliament or by proclamation, that it has received the assent of the Queen in Council.

An entry of every such speech, message or proclamation shall be made in the journal of each House, and a duplicate thereof duly attested shall be delivered to the proper officer to be kept among the records of Canada.

## V.—PROVINCIAL CONSTITUTIONS

### *Executive Power*

58. For each Province there shall be an officer, styled "the Lieutenant-Governor," appointed by the Governor-General in Council by instrument under the Great Seal of Canada.

59. A Lieutenant-Governor shall hold office during the pleasure of the Governor-General; but any Lieutenant-Governor appointed after the commencement of the first session of the Parliament of Canada shall not be removable within 5 years from his appointment, except for cause assigned, which shall be communicated to him in writing within one month after the order for his removal is made.

and shall be communicated by message to the Senate and to the House of Commons within one week thereafter if the Parliament is then sitting and if not then within one week after the commencement of the next session of the Parliament

60 The salaries of the Lieutenant-Governors shall be fixed and provided by the Parliament of Canada

61 Every Lieutenant-Governor shall, before assuming the duties of his office make and subscribe before the Governor-General or some person authorised by him oaths of allegiance and office similar to those taken by the Governor General

62 The provisions of this Act referring to the Lieutenant-Governor extend and apply to the Lieutenant-Governor for the time being of each Province, or other the Chief Executive Officer or Administrator for the time being carrying on the Government of the Province, by whatever title he is designated

63 The Executive Council of Ontario and of Quebec shall be composed of such persons as the Lieutenant-Governor from time to time thinks fit, and in the first instance of the following officers, namely—the Attorney-General, the Secretary and Registrar of the Province the Treasurer of the Province, the Commissioner of Crown Lands and the Commissioner of Agriculture and Public Works with in Quebec the Speaker of the Legislative Council and the Solicitor-General

64 The constitution of the executive authority in each of the Provinces of Nova Scotia and New Brunswick shall, subject to the provisions of this Act continue as it exists at the union until altered under the authority of this Act

65 All powers, authorities and functions which under any Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland or of the Legislature of Upper Canada, Lower Canada or Canada were or are before or at the union vested in or exercisable by the respective Governors or Lieutenant-Governors of those Provinces, with the advice or with the advice and consent of the respective Executive Councils thereof, or in conjunction with those Councils, or with any number of members thereof, or by those Governors or Lieutenant-Governors individually shall, as far as the same are capable of being exercised after the union in relation to the Government of Ontario and Quebec respectively, be vested in and shall or may be exercised by the Lieutenant Governor of Ontario and Quebec respectively, with the advice or with the advice and consent of or in conjunction with the respective Executive Councils, or any members thereof, or by the Lieutenant-Governor individually, as the case requires, subject nevertheless (except with respect to such as exist under

Acts of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland,) to be abolished or altered by the respective Legislatures of Ontario and Quebec.

66. The provisions of this Act referring to the Lieutenant-Governor in Council shall be construed as referring to the Lieutenant-Governor of the Province acting by and with the advice of the Executive Council thereof.

67. The Governor-General in Council may from time to time appoint an Administrator to execute the office and functions of Lieutenant-Governor during his absence, illness or other inability.

68. Unless and until the Executive Government of any Province otherwise directs with respect to that Province, the seats of Government of the Provinces shall be as follows, namely,—of Ontario, the city of Toronto; of Quebec, the city of Quebec; of Nova Scotia, the city of Halifax; and of New Brunswick, the city of Fredericton.

### *Legislative Power*

#### 1.—ONTARIO

69. There shall be a Legislature for Ontario consisting of the Lieutenant-Governor and of one House, styled "the Legislative Assembly of Ontario."

70. The Legislative Assembly of Ontario shall be composed of 82 members, to be elected to represent the 82 electoral districts set forth in the first schedule to this Act.

#### 2.—QUEBEC

71. There shall be a Legislature for Quebec consisting of the Lieutenant-Governor and of two Houses, styled "the Legislative Council of Quebec" and "the Legislative Assembly of Quebec."

72. The Legislative Council of Quebec shall be composed of 24 members, to be appointed by the Lieutenant-Governor, in the Queen's name, by instrument under the Great Seal of Quebec, one being appointed to represent each of the 24 electoral divisions of Lower Canada in this Act referred to, and each holding office for the term of his life, unless the Legislature of Quebec otherwise provides under the provisions of this Act.

73. The qualifications of the Legislative Councillors of Quebec shall be the same as those of the senators for Quebec.

74. The place of a Legislative Councillor of Quebec shall become vacant in the cases, *mutatis mutandis*, in which the place of senator becomes vacant.



75 When a vacancy happens in the Legislative Council of Quebec by resignation, death or otherwise, the Lieutenant-Governor, in the Queen's name, by instrument under the Great Seal of Quebec, shall appoint a fit and qualified person to fill the vacancy

76 If any question arises respecting the qualification of a Legislative Councillor of Quebec, or a vacancy in the Legislative Council of Quebec, the same shall be heard and determined by the Legislative Council

77 The Lieutenant Governor may from time to time, by instrument under the Great Seal of Quebec, appoint a member of the Legislative Council of Quebec to be Speaker thereof, and may remove him and appoint another in his stead

78 Until the Legislature of Quebec otherwise provides, the presence of at least 10 members of the Legislative Council, including the Speaker, shall be necessary to constitute a meeting for the exercise of its powers

79 Questions arising in the Legislative Council of Quebec shall be decided by a majority of voices, and the Speaker shall in all cases have a vote, and when the voices are equal the decision shall be deemed to be in the negative

80 The Legislative Assembly of Quebec shall be composed of 65 members to be elected to represent the 65 electoral divisions or districts of Lower Canada in this Act referred to, subject to alteration thereof by the Legislature of Quebec. Provided that it shall not be lawful to present to the Lieutenant Governor of Quebec for assent any bill for altering the limits of any of the electoral divisions or districts mentioned in the second schedule to this Act, unless the second and third readings of such bill have been passed in the Legislative Assembly with the concurrence of the majority of the members representing all those electoral divisions or districts, and the assent shall not be given to such bill unless an address has been presented by the Legislative Assembly to the Lieutenant-Governor stating that it has been so passed

### 3—ONTARIO AND QUEBEC

81 The Legislatures of Ontario and Quebec respectively shall be called together not later than 6 months after the union

82 The Lieutenant-Governor of Ontario and of Quebec shall from time to time, in the Queen's name, by instrument under the Great Seal of the Province, summon and call together the Legislative Assembly of the Province

83 Until the Legislature of Ontario or of Quebec otherwise provides, a person accepting or holding in Ontario or in Quebec any office, commission or employment, permanent or temporary, at the

nomination of the Lieutenant-Governor, to which an annual salary, or any fee, allowance, emolument or profit of any kind or amount whatever from the Province is attached, shall not be eligible as a member of the Legislative Assembly of the respective Province, nor shall he sit or vote as such; but nothing in this section shall make ineligible any person being a member of the Executive Council of the respective Province, or holding any of the following offices, that is to say, the offices of Attorney-General, Secretary and Registrar of the Province, Treasurer of the Province, Commissioner of Crown Lands and Commissioner of Agriculture and Public Works, and in Quebec Solicitor-General, or shall disqualify him to sit or vote in the House for which he is elected, provided he is elected while holding such office.

84. Until the Legislatures of Ontario and Quebec respectively otherwise provide, all laws which at the union are in force in those Provinces respectively, relative to the following matters, or any of them, namely,—the qualifications and disqualifications of persons to be elected or to sit or vote as members of the Assembly of Canada, the qualifications or disqualifications of voters, the oaths to be taken by voters, the returning officers, their powers and duties, the proceedings at elections, the periods during which such elections may be continued, and the trial of controverted elections and the proceedings incident thereto, the vacating of the seats of members and the issuing and execution of new writs in case of seats vacated otherwise than by dissolution,—shall respectively apply to elections of members to serve in the respective Legislative Assemblies of Ontario and Quebec.

Provided that, until the Legislature of Ontario otherwise provides, at any election for a member of the Legislative Assembly of Ontario for the district of Algoma, in addition to persons qualified by the law of the Province of Canada to vote, every male British subject, aged 21 years or upwards, being a householder, shall have a vote.

85. Every Legislative Assembly of Ontario and every Legislative Assembly of Quebec shall continue for 4 years from the day of the return of the writs for choosing the same (subject nevertheless to either the Legislative Assembly of Ontario or the Legislative Assembly of Quebec being sooner dissolved by the Lieutenant-Governor of the Province), and no longer.

86. There shall be a session of the Legislature of Ontario and of that of Quebec once at least in every year, so that 12 months shall not intervene between the last sitting of the Legislature in each Province in one session and its first sitting in the next session.

87. The following provisions of this Act respecting the House of Commons of Canada shall extend and apply to the Legislative Assemblies of Ontario and Quebec, that is to say,—the provisions

relating to the election of a speaker originally and on vacancies, the duties of the Speaker, the absence of the Speaker, the quorum, and the mode of voting, as if those provisions were here re enacted and made applicable in terms to each such Legislative Assembly

#### 4—NOVA SCOTIA AND NEW BRUNSWICK

88 The constitution of the Legislature of each of the Provinces of Nova Scotia and New Brunswick shall, subject to the provisions of this Act, continue as it exists at the union until altered under the authority of this Act, and the House of Assembly of New Brunswick existing at the passing of this Act shall, unless sooner dissolved, continue for the period for which it was elected

#### 5—ONTARIO QUEBEC AND NOVA SCOTIA

89 Each of the Lieutenant-Governors of Ontario, Quebec and Nova Scotia shall cause writs to be issued for the first election of members of the Legislative Assembly thereof in such form and by such person as he thinks fit, and at such time and addressed to such returning officer as the Governor-General directs, and so that the first election of member of Assembly for any electoral district or any sub division thereof shall be held at the same time and at the same places as the election for a member to serve in the House of Commons of Canada for that electoral district

#### 6—THE FOUR PROVINCES

90 The following provisions of this Act respecting the Parliament of Canada, namely,—the provisions relating to appropriation and tax bills the recommendation of money votes, the assent to bills, the disallowance of Acts and the signification of pleasure on bills reserved—shall extend and apply to the Legislatures of the several Provinces as if those provisions were here re enacted and made applicable in terms to the respective Provinces and the Legislatures thereof, with the substitution of the Lieutenant-Governor of the Province for the Governor General, of the Governor-General for the Queen and for a Secretary of State, of one year for 2 years, and of the Province for Canada

### VI—DISTRIBUTION OF LEGISLATIVE POWERS

#### *Powers of the Parliament*

91 It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces, and for greater certainty, but not so as to restrict the generality of the foregoing

And any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces

### *Exclusive Powers of Provincial Legislatures*

92 In each Province the Legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated that is to say —

(1) The amendment from time to time, notwithstanding anything in this Act, of the constitution of the Province, except as regards the office of Lieutenant-Governor

(2) Direct taxation within the Province in order to the raising of a revenue for provincial purposes

(3) The borrowing of money on the sole credit of the Province

(4) The establishment and tenure of provincial offices and the appointment and payment of provincial officers

(5) The management and sale of the public lands belonging to the Province and of the timber and wood thereon

(6) The establishment maintenance and management of public and reformatory prisons in and for the Province

(7) The establishment maintenance and management of hospitals asylums charities and eleemosynary institutions in and for the Province, other than marine hospitals

(8) Municipal institutions in the Province

(9) Shop saloon tavern auctioneer and other licences in order to the raising of a revenue for provincial, local or municipal purposes

(10) Local works and undertakings other than such as are of the following classes —

(a) Lines of steam or other ships railways, canals, telegraphs and other works and undertakings connecting the Province with any other or others of the Provinces, or extending beyond the limits of the Province

(b) Lines of steamships between the Province and any British or foreign country

(c) Such works as although wholly situate within the Province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the Provinces

(11) The incorporation of companies with provincial objects

(12) The solemnisation of marriage in the Province.

(13) Property and civil rights in the Province.

(14) The administration of justice in the Province, including the constitution, maintenance and organisation of provincial courts both of civil and of criminal jurisdiction, and including procedure in civil matters in those courts.

(15) The imposition of punishment by fine, penalty or imprisonment for enforcing any law of the Province made in relation to any matter coming within any of the classes of subjects enumerated in this section.

(16) Generally all matters of a merely local or private nature in the Province.

### *Education*

93. In and for each Province the Legislature may exclusively make laws in relation to education, subject and according to the following provisions :—

(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the Province at the union.

(2) All the powers, privileges and duties at the union by law conferred and imposed in Upper Canada on the separate schools and school trustees of the Queen's Roman Catholic subjects shall be and the same are hereby extended to the dissentient schools of the Queen's Protestant and Roman Catholic subjects in Quebec.

(3) Where in any Province a system of separate or dissentient schools exists by law at the union or is thereafter established by the Legislature of the Province, an appeal shall lie to the Governor-General in Council from any act or decision of any provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education.

(4) In case any such provincial law as from time to time seems to the Governor-General in Council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor-General in Council on any appeal under this section is not duly executed by the proper provincial authority in that behalf then and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section and of any decision of the Governor-General in Council under this section.

*Uniformity of Laws in Ontario, Nova Scotia  
and New Brunswick*

94 Notwithstanding anything in this Act, the Parliament of Canada may make provision for the uniformity of all or any of the laws relative to property and civil rights in Ontario, Nova Scotia and New Brunswick, and of the procedure of all or any of the courts in those three Provinces, and from and after the passing of any Act in that behalf the power of the Parliament of Canada to make laws in relation to any matter comprised in any such Act shall, notwithstanding anything in this Act, be unrestricted, but any Act of the Parliament of Canada making provision for such uniformity shall not have effect in any Province unless and until it is adopted and enacted as law by the Legislature thereof

*Agriculture and Immigration*

95 In each Province the Legislature may make laws in relation to agriculture in the Province, and to immigration into the Province and it is hereby declared that the Parliament of Canada may from time to time make laws in relation to agriculture in all or any of the Provinces and to immigration into all or any of the Provinces, and any law of the Legislature of a Province relative to agriculture or to immigration shall have effect in and for the Province as long and as far only as it is not repugnant to any Act of the Parliament of Canada

VII—JUDICATURE

96 The Governor General shall appoint the judges of the superior, district and county courts in each Province, except those of the courts of probate in Nova Scotia and New Brunswick

97 Until the laws relative to property and civil rights in Ontario, Nova Scotia and New Brunswick, and the procedure of the courts in those Provinces are made uniform, the judges of the courts of those Provinces appointed by the Governor-General shall be selected from the respective bars of those Provinces

98 The judges of the courts of Quebec shall be selected from the bar of that Province

99 The judges of the superior courts shall hold office during good behaviour, but shall be removable by the Governor General on address of the Senate and House of Commons

100 The salaries, allowances and pensions of the judges of the superior, district and county courts (except the courts of probate in Nova Scotia and New Brunswick), and of the Admiralty courts in cases where the judges thereof are for the time being paid by salary, shall be fixed and provided by the Parliament of Canada

101. The Parliament of Canada may, notwithstanding anything in this Act, from time to time provide for the constitution, maintenance and organisation of a General Court of Appeal for Canada, and for the establishment of any additional courts for the better administration of the laws of Canada.

#### VIII.—REVENUES ; DEBTS ; ASSETS ; TAXATION

102. All duties and revenues over which the respective Legislatures of Canada, Nova Scotia and New Brunswick before and at the union had and have power of appropriation, except such portions thereof as are by this Act reserved to the respective Legislatures of the Provinces, or are raised by them in accordance with the special powers conferred on them by this Act, shall form one Consolidated Revenue Fund, to be appropriated for the public service of Canada in the manner and subject to the charges in this Act provided.

103. The Consolidated Revenue Fund of Canada shall be permanently charged with the costs, charges and expenses incident to the collection, management and receipt thereof, and the same shall form the first charge thereon, subject to be reviewed and audited in such manner as shall be ordered by the Governor-General in Council until the Parliament otherwise provides.

104. The annual interests of the public debts of the several Provinces of Canada, Nova Scotia and New Brunswick at the union shall form the second charge on the Consolidated Revenue Fund of Canada.

105. Unless altered by the Parliament of Canada, the salary of the Governor-General shall be £10,000 sterling money of the United Kingdom of Great Britain and Ireland, payable out of the Consolidated Revenue Fund of Canada, and the same shall form the third charge thereon.

106. Subject to the several payments by this Act charged on the Consolidated Revenue Fund of Canada, the same shall be appropriated by the Parliament of Canada for the public service.

107. All stocks, cash, banker's balances and securities for money belonging to each Province at the time of the union, except as in this Act mentioned, shall be the property of Canada, and shall be taken in reduction of the amount of the respective debts of the Provinces at the union.

108. The public works and property of each Province, enumerated in the third schedule to this Act, shall be the property of Canada.

109. All lands, mines, minerals and royalties belonging to the several Provinces of Canada, Nova Scotia and New Brunswick at the union, and all sums then due or payable for such lands, mines, minerals or royalties, shall belong to the several Provinces of Ontario,

Quebec, Nova Scotia and New Brunswick in which the same are situate or arise, subject to any trusts existing in respect thereof, and to any interest other than that of the Province in the same <sup>(1)</sup>

110 All assets connected with such portions of the public debt of each Province as are assumed by that Province shall belong to that Province

111 Canada shall be liable for the debts and liabilities of each Province existing at the union

112 Ontario and Quebec conjointly shall be liable to Canada for the amount (if any) by which the debt of the Province of Canada exceeds at the union 62 500 000 dollars, and shall be charged with interest at the rate of 5 per cent per annum thereon

113 The assets enumerated in the fourth schedule to this Act belonging at the union to the Province of Canada shall be the property of Ontario and Quebec conjointly

114 Nova Scotia shall be liable to Canada for the amount (if any) by which its public debt exceeds at the union 8 000,000 dollars, and shall be charged with interest at the rate of 5 per cent per annum thereon

115 New Brunswick shall be liable to Canada for the amount (if any) by which its public debt exceeds at the union 7,000,000 dollars, and shall be charged with interest at the rate of 5 per cent per annum thereon

116 In case the public debts of Nova Scotia and New Brunswick do not at the union amount to 8,000 000 and 7,000,000 dollars respectively they shall respectively receive by half yearly payments in advance from the Government of Canada interest at 5 per cent per annum on the difference between the actual amounts of their respective debts and such stipulated amounts

117 The several Provinces shall retain all their respective public property not otherwise disposed of in this Act, subject to the right of Canada to assume any lands or public property required for fortifications or for the defence of the country

118 <sup>(2)</sup>

119 New Brunswick shall receive by half-yearly payments in advance from Canada for the period of 10 years from the union an additional allowance of 63,000 dollars per annum, but as long

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(1) "The British North America Act 1900," placed the Provinces of Manitoba British Columbia Alberta and Saskatchewan in a position of equality with the other Provinces of Confederation with respect to the administration and control of their natural resources

(2) Provisions substituted by those of "The British North America Act 1907", see page 49



as the public debt of that Province remains under 7,000,000 dollars, a deduction equal to the interest at 5 per cent. per annum on such deficiency shall be made from that allowance of 63,000 dollars.

120. All payments to be made under this Act, or in discharge of liabilities created under any Act of the Provinces of Canada, Nova Scotia and New Brunswick respectively, and assumed by Canada, shall, until the Parliament of Canada otherwise directs, be made in such form and manner as may from time to time be ordered by the Governor-General in Council.

121. All articles of the growth, produce or manufacture of any one of the Provinces shall, from and after the union, be admitted free into each of the other Provinces.

122. The customs and excise laws of each Province shall, subject to the provisions of this Act, continue in force until altered by the Parliament of Canada.

123. Where customs duties are, at the union, leviable on any goods, wares or merchandises in any two Provinces, those goods, wares and merchandises may, from and after the union, be imported from one of those Provinces into the other of them on proof of payment of the customs duty leviable thereon in the Province of exportation, and on payment of such further amount (if any) of customs duty as is leviable thereon in the Province of importation.

124. Nothing in this Act shall affect the right of New Brunswick to levy the lumber dues provided in chapter 15 of title 3 of "The Revised Statutes of New Brunswick," or in any Act amending that Act before or after the union, and not increasing the amount of such dues; but the lumber of any of the Provinces other than New Brunswick shall not be subject to such dues.

125. No lands or property belonging to Canada or any Province shall be liable to taxation.

126. Such portions of the duties and revenues over which the respective Legislatures of Canada, Nova Scotia and New Brunswick had before the union power of appropriation as are by this Act reserved to the respective Governments or Legislatures of the Provinces, and all duties and revenues raised by them in accordance with the special powers conferred upon them by this Act, shall in each Province form one Consolidated Revenue Fund to be appropriated for the public service of the Province.

## IX.—MISCELLANEOUS PROVISIONS

### *General*

127. If any person being at the passing of this Act a member of the Legislative Council of Canada, Nova Scotia or New Brunswick, to whom a place in the Senate is offered, does not within 30 days

thereafter, by writing under his hand addressed to the Governor-General of the Province of Canada or to the Lieutenant-Governor of Nova Scotia or New Brunswick (as the case may be), accept the same he shall be deemed to have declined the same, and any person who, being at the passing of this Act a member of the Legislative Council of Nova Scotia or New Brunswick, accepts a place in the Senate, shall thereby vacate his seat in such Legislative Council

128 Every member of the Senate or House of Commons of Canada shall before taking his seat therein take and subscribe before the Governor-General or some person authorised by him, and every member of a Legislative Council or Legislative Assembly of any Province shall before taking his seat therein take and subscribe before the Lieutenant-Governor of the Province or some person authorised by him, the oath of allegiance contained in the fifth schedule to this Act, and every member of the Senate of Canada and every member of the Legislative Council of Quebec shall also, before taking his seat therein, take and subscribe before the Governor-General or some person authorised by him, the declaration of qualification contained in the same schedule

129 Except as otherwise provided by this Act, all laws in force in Canada Nova Scotia or New Brunswick at the union, and all courts of civil and criminal jurisdiction, and all legal commissions, powers and authorities and all officers, judicial, administrative and ministerial, existing therein at the union, shall continue in Ontario Quebec, Nova Scotia and New Brunswick respectively, as if the union had not been made, subject nevertheless (except with respect to such as are enacted by or exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland) to be repealed, abolished or altered by the Parliament of Canada, or by the Legislature of the respective Province according to the authority of the Parliament or of that Legislature under this Act

130 Until the Parliament of Canada otherwise provides, all officers of the several Provinces having duties to discharge in relation to matters other than those coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces shall be officers of Canada, and shall continue to discharge the duties of their respective offices under the same liabilities, responsibilities and penalties as if the union had not been made

131 Until the Parliament of Canada otherwise provides the Governor General in Council may from time to time appoint such officers as the Governor General in Council deems necessary or proper for the effectual execution of this Act

132 The Parliament and Government of Canada shall have all powers necessary or proper for performing the obligations of Canada

or of any Province thereof, as part of the British Empire, towards foreign countries, arising under treaties between the Empire and such foreign countries.

133. Either the English or the French language may be used by any person in the debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec; and both those languages shall be used in the respective records and journals of those Houses; and either of those languages may be used by any person or in any pleading or process in or issuing from any court of Canada established under this Act, and in or from all or any of the courts of Quebec.

The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those languages.

### *Ontario and Quebec*

134. Until the Legislature of Ontario or of Quebec otherwise provides, the Lieutenant-Governors of Ontario and Quebec may each appoint under the Great Seal of the Province the following officers, to hold office during pleasure, that is to say, the Attorney-General, the Secretary and Registrar of the Province, the Treasurer of the Province, the Commissioner of Crown Lands, and the Commissioner of Agriculture and Public Works, and in the case of Quebec the Solicitor-General, and may, by order of the Lieutenant-Governor in Council, from time to time prescribe the duties of those officers, and of the several departments over which they shall preside or to which they shall belong, and of the officers and clerks thereof, and may also appoint other and additional officers to hold office during pleasure, and may from time to time prescribe the duties of those officers, and of the several departments over which they shall preside or to which they shall belong, and of the officers and clerks thereof.

135. Until the Legislature of Ontario or Quebec otherwise provides, all rights, powers, duties, functions, responsibilities or authorities at the passing of this Act vested in or imposed on the Attorney-General, Solicitor-General, Secretary and Registrar of the Province of Canada, Minister of Finance, Commissioner of Crown Lands, Commissioner of Public Works, and Minister of Agriculture and Receiver-General, by any law, statute or ordinance of Upper Canada, Lower Canada or Canada, and not repugnant to this Act, shall be vested in or imposed on any officer to be appointed by the Lieutenant-Governor for the discharge of the same or any of them; and the Commissioner of Agriculture and Public Works shall perform the duties and functions of the office of Minister of Agriculture at the passing of this Act imposed by the law of the Province of Canada, as well as those of the Commissioner of Public Works.

136 Until altered by the Lieutenant Governor in Council, the Great Seals of Ontario and Quebec respectively shall be the same, or of the same design, as those used in the Provinces of Upper Canada and Lower Canada respectively before their union as the Province of Canada

137 The words "and from thence to the end of the then next ensuing session of the Legislature," or words to the same effect, used in any temporary Act of the Province of Canada not expired before the union, shall be construed to extend and apply to the next session of the Parliament of Canada if the subject-matter of the Act is within the powers of the same as defined by this Act, or to the next sessions of the Legislatures of Ontario and Quebec respectively if the subject matter of the Act is within the powers of the same as defined by this Act

138 From and after the union the use of the words "Upper Canada" instead of "Ontario," or "Lower Canada" instead of "Quebec" in any deed, writ, process, pleading, document, matter or thing shall not invalidate the same

139 Any proclamation under the Great Seal of the Province of Canada issued before the union to take effect at a time which is subsequent to the union, whether relating to that Province, or to Upper Canada or to Lower Canada, and the several matters and things therein proclaimed, shall be and continue of like force and effect as if the union had not been made

140 Any proclamation which is authorised by any Act of the Legislature of the Province of Canada to be issued under the Great Seal of the Province of Canada, whether relating to that Province, or to Upper Canada or to Lower Canada, and which is not issued before the union may be issued by the Lieutenant Governor of Ontario or of Quebec, as its subject-matter requires, under the Great Seal thereof and from and after the issue of such proclamation the same and the several matters and things therein proclaimed shall be and continue of the like force and effect in Ontario or Quebec as if the union had not been made

141 The penitentiary of the Province of Canada shall, until the Parliament of Canada otherwise provides, be and continue the penitentiary of Ontario and of Quebec

142 The division and adjustment of the debts, credits, liabilities, properties and assets of Upper Canada and Lower Canada shall be referred to the arbitrament of three arbitrators, one chosen by the Government of Ontario, one by the Government of Quebec, and one by the Government of Canada, and the selection of the arbitrators shall not be made until the Parliament of Canada and the Legislatures of Ontario and Quebec have met, and the arbitrator chosen by the Government of Canada shall not be a resident either in Ontario or in Quebec

143. The Governor-General in Council may from time to time order that such and so many of the records, books and documents of the Province of Canada as he thinks fit shall be appropriated and delivered either to Ontario or to Quebec, and the same shall thenceforth be the property of that Province; and any copy thereof or extract therefrom, duly certified by the officer having charge of the original thereof, shall be admitted as evidence.

144. The Lieutenant-Governor of Quebec may from time to time, by proclamation under the Great Seal of the Province, to take effect from a day to be appointed therein, constitute townships in those parts of the Province of Quebec in which townships are not then already constituted, and fix the metes and bounds thereof.

### X.—INTERCOLONIAL RAILWAY

145. Inasmuch as the Provinces of Canada, Nova Scotia and New Brunswick have joined in a declaration that the construction of the Intercolonial Railway is essential to the consolidation of the union of British North America, and to the assent thereto of Nova Scotia and New Brunswick, and have consequently agreed that provision should be made for its immediate construction by the Government of Canada: Therefore, in order to give effect to that agreement, it shall be the duty of the Government and Parliament of Canada to provide for the commencement, within 6 months after the union, of a railway connecting the river St. Lawrence with the city of Halifax in Nova Scotia, and for the construction thereof without intermission and the completion thereof with all practicable speed.

### XI.—ADMISSION OF OTHER COLONIES

146. It shall be lawful for the Queen, by and with the advice of Her Majesty's most Honourable Privy Council, on addresses from the Houses of the Parliament of Canada, and from the Houses of the respective Legislatures of the Colonies or Provinces of Newfoundland, Prince Edward Island,<sup>(1)</sup> and British Columbia,<sup>(2)</sup> to admit those Colonies or Provinces, or any of them, into the union, and on address from the Houses of the Parliament of Canada to admit Rupert's Land<sup>(3)</sup> and the North-Western Territory,<sup>(3)</sup> or either of them, into the union, on such terms and conditions in

(1) By Imperial Order in Council of June 26, 1873 (*State Papers*, Vol. LXVII, page 1300), Prince Edward Island was admitted into the Dominion as from July 1, 1873.

(2) By Imperial Order in Council of May 16, 1871 (*State Papers*, Vol. LXI, page 1344), British Columbia was admitted into the Dominion as from July 20, 1871.

(3) By Imperial Order in Council of June 23, 1870 (*State Papers*, Vol. LX, page 406), Rupert's Land and the North-Western Territory were admitted into the Dominion as from July 15, 1870.

each case as are in the addresses expressed and as the Queen thinks fit to approve, subject to the provisions of this Act, and the provisions of any Order in Council in that behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland

147 In case of the admission of Newfoundland and Prince Edward Island, or either of them, each shall be entitled to a representation in the Senate of Canada of 4<sup>(1)</sup> members, and (notwithstanding any thing in this Act) in case of the admission of Newfoundland the normal number of senators shall be 102 and their maximum number shall be 110, but Prince Edward Island when admitted shall be deemed to be comprised in the third of the three divisions into which Canada is in relation to the constitution of the Senate, divided by this Act, and accordingly, after the admission of Prince Edward Island whether Newfoundland is admitted or not, the representation of Nova Scotia and New Brunswick in the Senate shall, as vacancies occur, be reduced from 12 to 10 members respectively, and the representation of each of those Provinces shall not be increased at any time beyond 10, except under the provisions of this Act for the appointment of 3 or 6 additional senators under the direction of the Queen

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## SCHEDULES

### *First Schedule*

#### ELECTORAL DISTRICTS OF ONTARIO

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### *Second Schedule*

#### ELECTORAL DISTRICTS OF QUEBEC SPECIALLY FIXED

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### *Third Schedule*

#### PROVINCIAL PUBLIC WORKS AND PROPERTY TO BE THE PROPERTY OF CANADA

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(<sup>1</sup>) Increased to 6 in the case of Newfoundland by section 1 (1) (vi) of The British North America Act 1915.

*Fourth Schedule*

ASSETS TO BE THE PROPERTY OF ONTARIO AND QUEBEC CONJOINTLY

\* \* \*

*Fifth Schedule*

## OATH OF ALLEGIANCE

I, A.B., do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria.

*Note.*—*The Name of the King or Queen of the United Kingdom of Great Britain and Ireland for the time being is to be substituted from time to time, with proper terms of reference thereto.*

## DECLARATION OF QUALIFICATION

I, A.B., do declare and testify that I am by law duly qualified to be appointed a member of the Senate of Canada [or as the case may be], and that I am legally or equitably seised as of freehold for my own use and benefit of lands or tenements held in free and common socage [or seised or possessed for my own use and benefit of lands or tenements held in franc-alieu or in roture (as the case may be)] in the Province of Nova Scotia [or as the case may be] of the value of 4,000 dollars over and above all rents, dues, debts, mortgages, charges and incumbrances due or payable out of or charged on or affecting the same, and that I have not collusively or colourably obtained a title to or become possessed of the said lands and tenements or any part thereof for the purpose of enabling me to become a member of the Senate of Canada [or as the case may be], and that my real and personal property are together worth 4,000 dollars over and above my debts and liabilities.

## 2.—British North America Act, 1871.

[34 &amp; 35 Vict., c. 28.—June 29, 1871.]

*Whereas doubts have been entertained respecting the powers of the Parliament of Canada to establish Provinces in territories admitted, or which may hereafter be admitted, into the Dominion of Canada, and to provide for the representation of such Provinces in the said Parliament, and it is expedient to remove such doubts, and to vest such powers in the said Parliament :*

*Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :*

1. This Act may be cited for all purposes as "The British North America Act, 1871."

2 The Parliament of Canada may from time to time establish new Provinces in any territories forming for the time being part of the Dominion of Canada, but not included in any Province thereof, and may, at the time of such establishment, make provision for the constitution and administration of any such Province and for the passing of laws for the peace, order and good government of such Province, and for its representation in the said Parliament

3 The Parliament of Canada may from time to time, with the consent of the Legislature of any Province of the said Dominion, increase, diminish or otherwise alter the limits of such Province, upon such terms and conditions as may be agreed to by the said Legislature, and may, with the like consent, make provision respecting the effect and operation of any such increase or diminution or alteration of territory in relation to any Province affected thereby

4 The Parliament of Canada may from time to time make provision for the administration, peace, order and good government of any territory not for the time being included in any Province

5 The following Acts passed by the said Parliament of Canada and intituled respectively—

An Act for the temporary government of Rupert's Land and the North Western Territory when united with Canada, "(1)" and

An Act to amend and continue the Act 32 and 33 Victoria, chapter 3, and to establish and provide for the Government of the Province of Manitoba,"(2)

shall be and be deemed to have been valid and effectual for all purposes whatsoever from the date at which they respectively received the assent, in the Queen's name, of the Governor-General of the said Dominion of Canada

6 Except as provided by the third section of this Act, it shall not be competent for the Parliament of Canada to alter the provisions of the last-mentioned Act of the said Parliament in so far as it relates to the Province of Manitoba, or of any other Act hereafter establishing new Provinces in the said Dominion, subject always to the right of the Legislature of the Province of Manitoba to alter from time to time the provisions of any law respecting the qualification of electors and members of the Legislative Assembly and to make laws respecting elections in the said Province

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(1) *State Papers* Vol LXI, page 1332

(2) *Ibid* Vol LXI page 1335



## 3.—British North America Act, 1886.

[49 &amp; 50 Vict., c. 35.—June 25, 1886.]

*Whereas it is expedient to empower the Parliament of Canada to provide for the representation in the Senate and House of Commons of Canada, or either of them, of any territory which for the time being forms part of the Dominion of Canada, but is not included in any Province :*

*Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :*

1. The Parliament of Canada may from time to time make provision for the representation in the Senate and House of Commons of Canada, or in either of them, of any territories which for the time being form part of the Dominion of Canada, but are not included in any Province thereof.

2. Any Act passed by the Parliament of Canada before the passing of this Act for the purpose mentioned in this Act shall, if not disallowed by the Queen, be, and shall be deemed to have been, valid and effectual from the date at which it received the assent, in Her Majesty's name, of the Governor-General of Canada.

It is hereby declared that any Act passed by the Parliament of Canada, whether before or after the passing of this Act, for the purpose mentioned in this Act or in "The British North America Act, 1871,"<sup>(1)</sup> has effect, notwithstanding anything in "The British North America Act, 1867,"<sup>(2)</sup> and the number of senators or the number of members of the House of Commons specified in the last-mentioned Act is increased by the number of senators or of members, as the case may be, provided by any such Act of the Parliament of Canada for the representation of any Provinces or territories of Canada.

3. This Act may be cited as "The British North America Act, 1886."

This Act and "The British North America Act, 1867," and "The British North America Act, 1871," shall be construed together, and may be cited together as "The British North America Acts, 1867 to 1886."

## 4.—British North America Act, 1907.

[7 Edw. VII, c. 11.—August 9, 1907.]

*Whereas an address has been presented to His Majesty by the Senate and Commons of Canada in the terms set forth in the schedule to this Act :*

<sup>(1)</sup> Page 47.<sup>(2)</sup> Page 19

*Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows —*

1 (1) The following grants shall be made yearly by Canada to every Province which at the commencement of this Act is a Province of the Dominion for its local purposes and the support of its Government and Legislature —

(a) A fixed grant—

where the population of the Province is under 150,000 of 100,000 dollars ,

where the population of the Province is 150 000, but does not exceed 200,000, of 150 000 dollars ,

where the population of the Province is 200,000, but does not exceed 400,000, of 180 000 dollars

where the population of the Province is 400,000, but does not exceed 800 000, of 190,000 dollars ,

where the population of the Province is 800,000, but does not exceed 1 500 000, of 220 000 dollars ,

where the population of the Province exceeds 1,500,000, of 240,000 dollars , and

(b) Subject to the special provisions of this Act as to the Provinces of British Columbia and Prince Edward Island, a grant at the rate of 80 cents per head of the population of the Province up to the number of 2,500 000 and at the rate of 60 cents per head of so much of the population as exceeds that number

(2) An additional grant of 100,000 dollars shall be made yearly to the Province of British Columbia for a period of 10 years from the commencement of this Act

(3) The population of a Province shall be ascertained from time to time in the case of the Provinces of Manitoba, Saskatchewan and Alberta respectively by the last quinquennial census or statutory estimate of population made under the Acts establishing those Provinces or any other Act of the Parliament of Canada making provision for the purpose, and in the case of any other Province by the last decennial census for the time being

(4) The grants payable under this Act shall be paid half yearly in advance to each Province

(5) The grants payable under this Act shall be substituted for the grants or subsidies (in this Act referred to as "existing grants ") payable for the like purposes at the commencement of

this Act to the several Provinces of the Dominion under the provisions of section 118 of "The British North America Act, 1897,"<sup>(1)</sup> or of any Order in Council establishing a Province, or of any Act of the Parliament of Canada containing directions for the payment of any such grant or subsidy, and those provisions shall cease to have effect.

(6) The Government of Canada shall have the same power of deducting sums charged against a Province on account of the interest on public debt in the case of the grant payable under this Act to the Province as they have in the case of the existing grant.

(7) Nothing in this Act shall affect the obligation of the Government of Canada to pay to any Province any grant which is payable to that Province, other than the existing grant for which the grant under this Act is substituted.

(8) In the case of the Provinces of British Columbia and Prince Edward Island, the amount paid on account of the grant payable per head of the population to the Provinces under this Act shall not at any time be less than the amount of the corresponding grant payable at the commencement of this Act; and if it is found on any decennial census that the population of the Province has decreased since the last decennial census, the amount paid on account of the grant shall not be decreased below the amount then payable, notwithstanding the decrease of the population.

2. This Act may be cited as "The British North America Act, 1907," and shall take effect as from the 1st day of July, 1907.

## SCHEDULE

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### 5.—Letters Patent, 1931 (as amended 1935).

*George V, by the Grace of God of Great Britain, Ireland and the British dominions beyond the Seas King, Defender of the Faith, Emperor of India; To all to whom these presents shall come, Greeting:*

*Whereas by certain Letters Patent under the Great Seal bearing date at Westminster the 15th day of June, 1905,<sup>(2)</sup> His late Majesty King Edward VII did constitute, order and declare that there should be a Governor-General in and over our Dominion of Canada, and that the person filling the said office of Governor-General should be from time to time appointed by Commission under the Royal Sign Manual and Signet:*

(1) Page 19. (2) Statutory Rules and Orders, 1905, Part II, page 1140

*And whereas it is our will and pleasure to revoke the said Letters Patent, and to substitute other provisions in place thereof*

*Now therefore we do by these presents revoke and determine the said recited Letters Patent, and everything therein contained, but without prejudice to anything lawfully done thereunder*

*And we do declare our will and pleasure as follows*

1 We do hereby constitute, order and declare that there shall be a Governor General and Commander-in-Chief in and over our Dominion of Canada (hereinafter called "our said Dominion"), and appointments to the said office shall be made by Commission under our Sign Manual and Signet

And we do hereby authorise and command our said Governor-General and Commander-in-Chief (hereinafter called "our said Governor General") to do and execute, in due manner, all things that shall belong to his said office, and to the trust we have reposed in him according to the several powers and authorities granted or appointed him by virtue of The British North America Act, 1867, <sup>(1)</sup> and of these present Letters Patent and of such Commission as may be issued to him under our Sign Manual and Signet, and according to such Instructions as may from time to time be given to him under our Sign Manual and Signet and to such laws as are or shall hereafter be in force in our said Dominion

2 And we do hereby authorise and empower our said Governor-General to keep and use the Great Seal of our said Dominion for sealing all things whatsoever that shall pass the said Great Seal

3 And we do further authorise and empower our said Governor General to constitute and appoint, in our name and on our behalf, all such judges commissioners, justices of the peace, and other necessary officers and Ministers of our said Dominion, as may be lawfully constituted or appointed by us

4 And we do further authorise and empower our said Governor General, so far as we lawfully may, upon sufficient cause to him appearing to remove from his office or to suspend from the exercise of the same, any person exercising any office within our said Dominion under or by virtue of any Commission or warrant granted or which may be granted, by us in our name or under our authority

5 And we do further authorise and empower our said Governor-General to exercise all powers lawfully belonging to us in respect of the summoning, proroguing or dissolving the Parliament of our said Dominion

6 And whereas by 'The British North America Act, 1867,' it is amongst other things enacted that it shall be lawful for us, if we think fit, to authorise the Governor-General of our Dominion of

Canada to appoint any person or persons, jointly or severally, to be his deputy or deputies within any part or parts of our said Dominion, and in that capacity to exercise, during the pleasure of our said Governor-General, such of the powers, authorities and functions of our said Governor-General as he may deem it necessary or expedient to assign to such deputy or deputies, subject to any limitations or directions from time to time expressed or given by us : Now we do hereby authorise and empower our said Governor-General, subject to such limitations and directions as aforesaid, to appoint any person or persons, jointly or severally, to be his deputy or deputies within any part or parts of our said Dominion of Canada, and in that capacity to exercise, during his pleasure, such of his powers, functions, and authorities, as he may deem it necessary or expedient to assign to him or them : Provided always, that the appointment of such a deputy or deputies shall not affect the exercise of any such power, authority or function by our said Governor-General in person.

7. And we do hereby declare our pleasure to be that, in the event of the death, incapacity, removal or absence of our said Governor-General out of our said Dominion, all and every the powers and authorities herein granted to him shall, until our further pleasure is signified therein, be vested in such person as may be appointed by us under our Sign Manual and Signet to be our Lieutenant-Governor of our said Dominion ; or if there shall be no such Lieutenant-Governor in our said Dominion, then in such person or persons as may be appointed by us under our Sign Manual and Signet to administer the Government of the same ; and in case there shall be no person or persons within our said Dominion so appointed by us, then in our Chief Justice for the time being of the Supreme Court of our said Dominion, or, in case of the death, incapacity, removal or absence out of our said Dominion of our said Chief Justice for the time being, then in the senior judge for the time being of our said Supreme Court then residing in our said Dominion and not being under incapacity.

Provided always, that the said senior judge shall act in the administration of the Government only if and when our said Chief Justice shall not be present within our said Dominion and capable of administering the Government.

Provided further that no such powers or authorities shall vest in such Lieutenant-Governor, or such other person or persons, until he or they shall have taken the oaths appointed to be taken by the Governor-General of our said Dominion, and in the manner provided by the Instructions<sup>(1)</sup> accompanying these our Letters Patent.

7A. Whenever and so often as the Governor-General shall be temporarily absent from the Dominion, with our permission, for the purpose of visiting some neighbouring State or territory, for a period

not exceeding one month, then and in every such case the Governor-General may continue to exercise all and every the powers vested in him as fully as if he were residing within the Dominion, including the power to appoint a deputy or deputies as provided in the 6th clause of these our Letters Patent

8-10 [Identical, *mutatis mutandis*, with the same parts of the Letters Patent in respect of Australia see page 86]

IN witness whereof we have caused these our Letters to be made Patent Witness ourself at Westminster, the 23rd day of March, in the 21st year of our reign

By warrant under the King's Sign Manual

SCHUSTER

## 6 — Royal Instructions, 1931.

GEORGE R I

*Whereas by certain Letters Patent bearing even date<sup>(1)</sup> herewith we have constituted, ordered and declared that there shall be a Governor-General and Commander in Chief (hereinafter called "our said Governor General") in and over our Dominion of Canada (hereinafter called "our said Dominion"), And we have thereby authorised and commanded our said Governor General to do and execute in due manner all things that shall belong to his said office, and to the trust we have reposed in him according to the several powers and authorities granted or appointed him by virtue of the said Letters Patent and of such Commission as may be issued to him under our Sign Manual and Signet, and according to such Instructions as may from time to time be given to him under our Sign Manual and Signet, and to such laws as are or shall hereafter be in force in our said Dominion. Now, therefore, we do, by these our Instructions under our Sign Manual and Signet, declare our pleasure to be as follows —*

I Our said Governor-General for the time being shall, with all due solemnity, cause our Commission under our Sign Manual and Signet, appointing our said Governor General for the time being, to be read and published in the presence of the Chief Justice for the time being, or other judge of the Supreme Court of our said Dominion, and of the members of the Privy Council in our said Dominion

Our said Governor-General, and every other officer appointed to administer the Government of our said Dominion, shall take the oath of allegiance in the form following: "I, do swear that I will be faithful and bear true allegiance to His Majesty King George, his heirs and successors, according to law. So help me God;" and likewise he or they shall take the usual oath for the due execution of the office of our Governor-General and Commander-in-Chief in and over our said Dominion, and for the due and impartial administration of justice; which oaths the said Chief Justice for the time being of our said Dominion, or, in his absence, or in the event of his being otherwise incapacitated, any judge of the Supreme Court of our said Dominion shall, and he is hereby required to, tender and administer unto him or them.

2. And we do authorise and require our said Governor-General from time to time, by himself or by any other person to be authorised by him in that behalf, to administer to all and to every person or persons, as he shall think fit, who shall hold any office or place of trust or profit in our said Dominion, the said oath of allegiance, together with such other oath or oaths as may from time to time be prescribed by any laws or statutes in that behalf made and provided.

3. And we do require our said Governor-General to communicate forthwith to the Privy Council for our said Dominion these our Instructions, and likewise all such others, from time to time, as he shall find convenient for our service to be imparted to them.

4. [Identical, *mutatis mutandis*, with clause 7 of the Instructions in respect of Australia: see page 88.]

5. And we do further authorise and empower our said Governor-General, as he shall see occasion, in our name and on our behalf, when any crime or offence against the laws of our said Dominion has been committed for which the offender may be tried therein, to grant a pardon to any accomplice, in such crime or offence, who shall give such information as shall lead to the conviction of the principal offender, or of any one of such offenders if more than one, and further, to grant to any offender convicted of any such crime or offence in any court, or before any judge, justice or magistrate, within our said Dominion, a pardon, either free or subject to lawful conditions, or any respite of the execution of the sentence of any such offender, for such period as to our said Governor-General may seem fit, and to remit any fines, penalties or forfeitures which may become due and payable to us. And we do hereby direct and enjoin that our said Governor-General shall not pardon or reprieve any such offender without first receiving in capital cases the advice of the Privy Council for our said Dominion, and in other cases the advice of one, at least, of his Ministers; and in any case in which such pardon or reprieve might directly affect the interests of our Empire, or any country or place beyond the jurisdiction of the

Government of our said Dominion, our said Governor-General shall, before deciding as to either pardon or reprieve, take those interests specially into his own personal consideration in conjunction with such advice as aforesaid

6 And whereas great prejudice may happen to our service and to the security of our said Dominion by the absence of our said Governor General, he shall not, upon any pretence whatever, quit our said Dominion without having first obtained leave from us for so doing under our Sign Manual and Signet, or through the Prime Minister of our said Dominion

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## PROVINCES OF CANADA

The source of the powers of the Provincial Governments of Canada is "The British North America Act, 1867,"<sup>(1)</sup> as amended. A brief account of the Government of each Province is given in the *Canada Year Book*, 1922-23

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<sup>(1)</sup> Page 19



## COMMONWEALTH OF AUSTRALIA

1. Act of the Imperial Parliament to constitute the Commonwealth.—July 9, 1900.

Text in *State Papers*, Vol. XCII, page 1256.

*Amendments*

ACTS OF THE COMMONWEALTH PARLIAMENT :

April 3, 1907. . . . . Text in *Acts of the Parliament of the Commonwealth of Australia*, 1901–1935, Vol. I, page 94.

August 6, 1910. . . . . Text in *Acts of the Parliament of the Commonwealth of Australia*, 1901–1935, Vol. I, page 95.

February 13, 1929. . . . . Text in *Acts of the Parliament of the Commonwealth of Australia*, 1901–1935, Vol. I, page 95.

2. Letters Patent constituting the Office of Governor-General and Commander-in-Chief.—Westminster, October 29, 1900.

Text in *Statutory Rules and Orders* revised to December 31, 1903, Vol. I, Australia, page 2.

*Amendment*

LETTERS PATENT :

Westminster, December 15, 1920. . . . . Text in *Statutory Rules and Orders*, 1920, Vol. II, page 1566

3. Royal Instructions to the Governor-General and Commander-in-Chief.—St. James's, October 29, 1900.

*Amendments*

ADDITIONAL INSTRUCTIONS :

St. James's, August 11, 1902.

St. James's, December 15, 1920.

. . . . .

- I. Act of Parliament, 1900 (as amended 1907, 1910 and 1929).

[63 & 64 Vict., c. 12—July 9, 1900.]

*Whereas the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the constitution hereby established :*

*And whereas it is expedient to provide for the admission into the Commonwealth of other Australasian Colonies and possessions of the Queen :*

*Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows —*

1 This Act may be cited as "The Commonwealth of Australia Constitution Act"

2 The provisions of this Act referring to the Queen shall extend to Her Majesty's heirs and successors in the sovereignty of the United Kingdom

3 It shall be lawful for the Queen, with the advice of the Privy Council, to declare by proclamation<sup>(1)</sup> that, on and after a day therein appointed not being later than one year after the passing of this Act, the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania and also, if Her Majesty is satisfied that the people of Western Australia have agreed thereto, of Western Australia, shall be united in a Federal Commonwealth under the name of the Commonwealth of Australia" But the Queen may, at any time after the proclamation, appoint a Governor General for the Commonwealth

4 The Commonwealth shall be established and the constitution of the Commonwealth shall take effect, on and after the day so appointed But the Parliaments of the several Colonies may at any time after the passing of this Act make any such laws, to come into operation on the day so appointed, as they might have made if the constitution had taken effect at the passing of this Act

5 This Act, and all laws made by the Parliament of the Commonwealth under the constitution, shall be binding on the courts, judges and people of every State and of every part of the Commonwealth, notwithstanding anything in the laws of any State, and the laws of the Commonwealth shall be in force on all British ships, the Queen's ships of war excepted, whose first port of clearance and whose port of destination are in the Commonwealth

6 "The Commonwealth" shall mean the Commonwealth of Australia as established under this Act

The States" shall mean such of the Colonies of New South Wales, New Zealand, Queensland, Tasmania, Victoria, Western Australia, and South Australia, including the Northern Territory of South Australia, as for the time being are parts of the Commonwealth, and such colonies or territories as may be admitted into or established by the Commonwealth as States, and each of such parts of the Commonwealth shall be called a "State"

"Original States" shall mean such States as are parts of the Commonwealth at its establishment

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<sup>(1)</sup> The day appointed by proclamation of September 17 1900 (*State Papers*, Vol. \CIV page 130) was January 1 1901

7. "The Federal Council of Australasia Act, 1885,"<sup>(1)</sup> is hereby repealed, but so as not to affect any laws passed by the Federal Council of Australasia and in force at the establishment of the Commonwealth.

Any such law may be repealed as to any State by the Parliament of the Commonwealth, or as to any Colony not being a State by the Parliament thereof.

8. After the passing of this Act "The Colonial Boundaries Act, 1895,"<sup>(2)</sup> shall not apply to any Colony which becomes a State of the Commonwealth; but the Commonwealth shall be taken to be a self-governing Colony for the purposes of that Act.

9. The constitution of the Commonwealth shall be as follows:—

## THE CONSTITUTION

This constitution is divided as follows:—

Chapter I.—The Parliament:

Part I.—General:

Part II.—The Senate:

Part III.—The House of Representatives:

Part IV.—Both Houses of the Parliament:

Part V.—Powers of the Parliament:

Chapter II.—The Executive Government:

Chapter III.—The Judicature:

Chapter IV.—Finance and trade:

Chapter V.—The States:

Chapter VI.—New States:

Chapter VII.—Miscellaneous.

Chapter VIII.—Alteration of the constitution.

The schedule.

## CHAPTER I.—THE PARLIAMENT

### PART I.—General

1. The legislative power of the Commonwealth shall be vested in a Federal Parliament, which shall consist of the Queen, a Senate, and a House of Representatives, and which is hereinafter called "the Parliament," or "the Parliament of the Commonwealth."

2. A Governor-General appointed by the Queen shall be Her Majesty's representative in the Commonwealth, and shall have and may exercise in the Commonwealth during the Queen's pleasure, but subject to this constitution, such powers and functions of the Queen as Her Majesty may be pleased to assign to him.

(1) *State Papers*, Vol. LXXVI, page 403.

(2) *Ibid.*, Vol. LXXXVII, page 967.

3 There shall be payable to the Queen out of the Consolidated Revenue Fund of the Commonwealth, for the salary of the Governor-General, an annual sum which, until the Parliament otherwise provides, shall be £10,000

The salary of a Governor-General shall not be altered during his continuance in office

4 The provisions of this constitution relating to the Governor-General extend and apply to the Governor General for the time being, or such person as the Queen may appoint to administer the Government of the Commonwealth, but no such person shall be entitled to receive any salary from the Commonwealth in respect of any other office during his administration of the Government of the Commonwealth

5 The Governor-General may appoint such times for holding the sessions of the Parliament as he thinks fit, and may also from time to time, by proclamation or otherwise, prorogue the Parliament, and may in like manner dissolve the House of Representatives

After any general election the Parliament shall be summoned to meet not later than 30 days after the day appointed for the return of the writs

The Parliament shall be summoned to meet not later than 6 months after the establishment of the Commonwealth

6 There shall be a session of the Parliament once at least in every year, so that 12 months shall not intervene between the last sitting of the Parliament in one session and its first sitting in the next session

## PART II — *The Senate*

7 The Senate shall be composed of senators for each State, directly chosen by the people of the State, voting, until the Parliament otherwise provides, as one electorate

But until the Parliament of the Commonwealth otherwise provides, the Parliament of the State of Queensland, if that State be an original State, may make laws dividing the State into divisions and determining the number of senators to be chosen for each division, and in the absence of such provision the State shall be one electorate

Until the Parliament otherwise provides there shall be 6 senators for each original State. The Parliament may make laws increasing or diminishing the number of senators for each State, but so that equal representation of the several original States shall be maintained and that no original State shall have less than 6 senators

The senators shall be chosen for a term of 6 years, and the names of the senators chosen for each State shall be certified by the Governor to the Governor-General

8. The qualification of electors of senators shall be in each State that which is prescribed by this constitution, or by the Parliament, as the qualification for electors of members of the House of Representatives; but in the choosing of senators each elector shall vote only once.

9. The Parliament of the Commonwealth may make laws prescribing the method of choosing senators, but so that the method shall be uniform for all the States. Subject to any such law, the Parliament of each State may make laws prescribing the method of choosing the senators for that State.

The Parliament of a State may make laws for determining the times and places of elections of senators for the State.

10. Until the Parliament otherwise provides, but subject to this constitution, the laws in force in each State, for the time being, relating to elections for the more numerous House of the Parliament of the State shall, as nearly as practicable, apply to elections of senators for the State.

11. The Senate may proceed to the despatch of business, notwithstanding the failure of any State to provide for its representation in the Senate.

12. The Governor of any State may cause writs to be issued for elections of senators for the State. In case of the dissolution of the Senate the writs shall be issued within 10 days from the proclamation of such dissolution.

13. As soon as may be after the Senate first meets, and after each first meeting of the Senate following a dissolution thereof, the Senate shall divide the senators chosen for each State into two classes, as nearly equal in number as practicable; and the places of the senators of the first class shall become vacant at the expiration of 3 years, and the places of those of the second class at the expiration of 6 years, from the beginning of their term of service; and afterwards the places of senators shall become vacant at the expiration of 6 years from the beginning of their term of service.

The election to fill vacant places shall be made within one year before the places are to become vacant.

For the purposes of this section the term of service of a senator shall be taken to begin on the first day of July following the day of his election, except in the cases of the first election and of the election next after any dissolution of the Senate, when it shall be taken to begin on the first day of July preceding the day of his election.

14. Whenever the number of senators for a State is increased or diminished, the Parliament of the Commonwealth may make such provision for the vacating of the places of senators for the State as it deems necessary to maintain regularity in the rotation.

15 If the place of a senator becomes vacant before the expiration of his term of service, the Houses of Parliament of the State for which he was chosen shall, sitting and voting together, choose a person to hold the place until the expiration of the term, or until the election of a successor as hereinafter provided, whichever first happens. But if the Houses of Parliament of the State are not in session at the time when the vacancy is notified, the Governor of the State, with the advice of the Executive Council thereof, may appoint a person to hold the place until the expiration of 14 days after the beginning of the next session of the Parliament of the State, or until the election of a successor, whichever first happens.

At the next general election of members of the House of Representatives or at the next election of senators for the State, whichever first happens, a successor shall, if the term has not then expired, be chosen to hold the place from the date of his election until the expiration of the term.

The name of any senator so chosen or appointed shall be certified by the Governor of the State to the Governor-General.

16 The qualifications of a senator shall be the same as those of a member of the House of Representatives.

17 The Senate shall, before proceeding to the despatch of any other business, choose a senator to be the President of the Senate and as often as the office of President becomes vacant the Senate shall again choose a senator to be the President.

The President shall cease to hold his office if he ceases to be a senator. He may be removed from office by a vote of the Senate, or he may resign his office or his seat by writing addressed to the Governor-General.

18 Before or during any absence of the President, the Senate may choose a senator to perform his duties in his absence.

19 A senator may, by writing addressed to the President, or to the Governor-General if there is no President or if the President is absent from the Commonwealth, resign his place, which thereupon shall become vacant.

20 The place of a senator shall become vacant if for two consecutive months of any session of the Parliament he, without the permission of the Senate, fails to attend the Senate.

21 Whenever a vacancy happens in the Senate, the President, or if there is no President or if the President is absent from the Commonwealth the Governor-General, shall notify the same to the Governor of the State in the representation of which the vacancy has happened.

22 Until the Parliament otherwise provides, the presence of at least one-third of the whole number of the senators shall be necessary to constitute a meeting of the Senate for the exercise of its powers.

27 Subject to this constitution, the Parliament may make laws for increasing or diminishing the number of the members of the *House of Representatives*

28 Every House of Representatives shall continue for 3 years from the first meeting of the House, and no longer, but may be sooner dissolved by the Governor General

29 Until the Parliament of the Commonwealth otherwise provides, the Parliament of any State may make laws for determining the divisions in each State for which members of the House of Representatives may be chosen and the number of members to be chosen for each division. A division shall not be formed out of parts of different States

In the absence of other provision, each State shall be one electorate

30 Until the Parliament otherwise provides, the qualification of electors of members of the House of Representatives shall be in each State that which is prescribed by the law of the State as the qualification of electors of the more numerous House of Parliament of the State but in the choosing of members each elector shall vote only once

31 Until the Parliament otherwise provides, but subject to this constitution the laws in force in each State for the time being relating to elections for the more numerous House of the Parliament of the State shall as nearly as practicable, apply to elections in the State of members of the House of Representatives

32 The Governor-General in Council may cause writs to be issued for general elections of members of the House of Representatives

After the first general election the writs shall be issued within 10 days from the expiry of a House of Representatives or from the proclamation of a dissolution thereof

33 Whenever a vacancy happens in the House of Representatives, the Speaker shall issue his writ for the election of a new member, or if there is no Speaker or if he is absent from the Commonwealth the Governor-General in Council may issue the writ

34 Until the Parliament otherwise provides, the qualifications of a member of the House of Representatives shall be as follows —

(i) He must be of the full age of 21 years, and must be an elector entitled to vote at the election of members of the House of Representatives, or a person qualified to become such elector, and must have been for 3 years at the least a resident within the limits of the Commonwealth as existing at the time when he is chosen

(ii) He must be a subject of the Queen, either natural born or for at least 5 years naturalised under a law of the United Kingdom or of a Colony which has become or becomes a State, or of the Commonwealth, or of a State

35. The House of Representatives shall, before proceeding to the despatch of any other business, choose a member to be the Speaker of the House, and as often as the office of Speaker becomes vacant the House shall again choose a member to be the Speaker.

The Speaker shall cease to hold his office if he ceases to be a member. He may be removed from office by a vote of the House, or he may resign his office or his seat by writing addressed to the Governor-General.

36. Before or during any absence of the Speaker, the House of Representatives may choose a member to perform his duties in his absence.

37. A member may by writing addressed to the Speaker, or to the Governor-General if there is no Speaker or if the Speaker is absent from the Commonwealth, resign his place, which thereupon shall become vacant.

38. The place of a member shall become vacant if for 2 consecutive months of any session of the Parliament he, without the permission of the House, fails to attend the House.

39. Until the Parliament otherwise provides, the presence of at least one-third of the whole number of the members of the House of Representatives shall be necessary to constitute a meeting of the House for the exercise of its powers.

40. Questions arising in the House of Representatives shall be determined by a majority of votes other than that of the Speaker. The Speaker shall not vote unless the numbers are equal, and then he shall have a casting vote.

#### PART IV.—*Both Houses of the Parliament*

41. No adult person who has or acquires a right to vote at elections for the more numerous House of the Parliament of a State shall, while the right continues, be prevented by any law of the Commonwealth from voting at elections for either House of the Parliament of the Commonwealth.

42. Every senator and every member of the House of Representatives shall before taking his seat make and subscribe before the Governor-General, or some person authorised by him, an oath or affirmation of allegiance in the form set forth in the schedule to this constitution.

43. A member of either House of the Parliament shall be incapable of being chosen or of sitting as a member of the other House.

44. Any person who—

(i) Is under any acknowledgment of allegiance, obedience, or adherence to a foreign Power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign Power ; or



(ii) Is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer, or

(iii) Is an undischarged bankrupt or insolvent, or

(iv) Holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth, or

(v) Has any direct or indirect pecuniary interest in any agreement with the public service of the Commonwealth otherwise than as a member and in common with the other members of an incorporated company consisting of more than 25 persons, shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives

But sub section (iv) does not apply to the office of any of the Queen's Ministers of State for the Commonwealth, or of any of the Queen's Ministers for a State, or to the receipt of pay, half pay, or a pension by any person as an officer or member of the Queen's navy or army or to the receipt of pay as an officer or member of the naval or military forces of the Commonwealth by any person whose services are not wholly employed by the Commonwealth

45 If a senator or member of the House of Representatives—

(i) Becomes subject to any of the disabilities mentioned in the last preceding section, or

(ii) Takes the benefit whether by assignment, composition, or otherwise, of any law relating to bankrupt or insolvent debtors, or

(iii) Directly or indirectly takes or agrees to take any fee or honorarium for services rendered to the Commonwealth, or for services rendered in the Parliament to any person or State, his place shall thereupon become vacant

46 Until the Parliament otherwise provides, any person declared by this constitution to be incapable of sitting as a senator or as a member of the House of Representatives shall, for every day on which he so sits, be liable to pay the sum of £100 to any person who sues for it in any court of competent jurisdiction

47 Until the Parliament otherwise provides, any question respecting the qualification of a senator or of a member of the House of Representatives, or respecting a vacancy in either House of the Parliament, and any question of a disputed election to either House, shall be determined by the House in which the question arises

48 Until the Parliament otherwise provides, each senator and each member of the House of Representatives shall receive an allowance of £400 a year, to be reckoned from the day on which he takes his seat

49. The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.

50. Each House of the Parliament may make rules and orders with respect to—

(i) *The mode in which its powers, privileges, and immunities may be exercised and upheld.*

(ii) *The order and conduct of its business and proceedings either separately or jointly with the other House.*

### PART V.—*Powers of the Parliament*

51. The Parliament shall, subject to this constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to :—

(i) Trade and commerce with other countries, and among the States.

(ii) Taxation ; but so as not to discriminate between States or parts of States.

(iii) Bounties on the production or export of goods, but so that such bounties shall be uniform throughout the Commonwealth.

(iv) Borrowing money on the public credit of the Commonwealth.

(v) Postal, telegraphic, telephonic, and other like services.

(vi) The naval and military defence of the Commonwealth and of the several States, and the control of the forces to execute and maintain the laws of the Commonwealth.

(vii) Lighthouses, lightships, beacons and buoys.

(viii) Astronomical and meteorological observations.

(ix) Quarantine.

(x) Fisheries in Australian waters beyond territorial limits.

(xi) Census and statistics.

(xii) Currency, coinage, and legal tender.

(xiii) Banking, other than State banking ; also State banking extending beyond the limits of the State concerned, the incorporation of banks, and the issue of paper money.

(xiv) Insurance, other than State insurance ; also State insurance extending beyond the limits of the State concerned.

(xv) Weights and measures.

(xvi) Bills of exchange and promissory notes.

(xvii) Bankruptcy and insolvency.

(xviii) Copyrights patents of inventions and designs, and trade marks

(xix) Naturalisation and aliens

(xx) Foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth

(xxi) Marriage

(xxii) Divorce and matrimonial causes, and in relation thereto, parental rights, and the custody and guardianship of infants

(xxiii) Invalid and old age pensions

(xxiv) The service and execution throughout the Commonwealth of the civil and criminal process and the judgments of the courts of the States

(xxv) The recognition throughout the Commonwealth of the laws, the public Acts and records and the judicial proceedings of the States

(xxvi) The people of any race, other than the aboriginal race in any State for whom it is deemed necessary to make special laws

(xxvii) Immigration and emigration

(xxviii) The influx of criminals

(xxix) External affairs

(xxx) The relations of the Commonwealth with the islands of the Pacific

(xxxi) The acquisition of property on just terms from any State or person in respect of which the Parliament has power to make laws

(xxxii) The control of railways with respect to transport for the naval and military purposes of the Commonwealth

(xxxiii) The acquisition with the consent of a State, of any railways of the State on terms arranged between the Commonwealth and the State

(xxxiv) Railway construction and extension in any State with the consent of that State

(xxxv) Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State

(xxxvi) Matters in respect of which this constitution makes provision until the Parliament otherwise provides

(xxxvii) Matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law

(xxxviii) The exercise within the Commonwealth, at the request or with the concurrence of the Parliaments of all the States directly concerned, of any power which can at the establishment of this

constitution be exercised only by the Parliament of the United Kingdom or by the Federal Council of Australasia.

(xxxix) Matters incidental to the execution of any power vested by this constitution in the Parliament or in either House thereof, or in the Government of the Commonwealth, or in the Federal judicature, or in any department or officer of the Commonwealth.

52. The Parliament shall, subject to this constitution, have exclusive power to make laws for the peace, order, and good government of the Commonwealth with respect to—

(i) The seat of government of the Commonwealth, and all places acquired by the Commonwealth for public purposes.

(ii) Matters relating to any department of the public service the control of which is by this constitution transferred to the Executive Government of the Commonwealth.

(iii) Other matters declared by this constitution to be within the exclusive power of the Parliament.

53. Proposed laws appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate. But a proposed law shall not be taken to appropriate revenue or moneys, or to impose taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand or payment or appropriation of fees for licences, or fees for services under the proposed law.

The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government.

The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people.

The Senate may at any stage return to the House of Representatives any proposed law which the Senate may not amend, requesting, by message, the omission or amendment of any items or provisions therein. And the House of Representatives may, if it thinks fit, make any of such omissions or amendments, with or without modifications.

Except as provided in this section, the Senate shall have equal power with the House of Representatives in respect of all proposed laws.

54. The proposed law which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation.

55. Laws imposing taxation shall deal only with the imposition of taxation, and any provision therein dealing with any other matter shall be of no effect.

Laws imposing taxation, except laws imposing duties of customs or of excise, shall deal with one subject of taxation only ;

but laws imposing duties of customs shall deal with duties of customs only, and laws imposing duties of excise shall deal with duties of excise only

56 A vote resolution, or proposed law for the appropriation of revenue or moneys shall not be passed unless the purpose of the appropriation has in the same session been recommended by message of the Governor General to the House in which the proposal originated

57 If the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it or passes it with amendments to which the House of Representatives will not agree, and if after an interval of 3 months the House of Representatives in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree the Governor General may dissolve the Senate and the House of Representatives simultaneously But such dissolution shall not take place within 6 months before the date of the expiry of the House of Representatives by effluxion of time

If after such dissolution the House of Representatives again passes the proposed law, with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it or passes it with amendments to which the House of Representatives will not agree, the Governor-General may convene a joint sitting of the members of the Senate and of the House of Representatives

The members present at the joint sitting may deliberate and shall vote together upon the proposed law as last proposed by the House of Representatives, and upon amendments, if any, which have been made therein by one House and not agreed to by the other, and any such amendments which are affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives shall be taken to have been carried, and if the proposed law, with the amendments, if any, so carried is affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives, it shall be taken to have been duly passed by both Houses of the Parliament, and shall be presented to the Governor General for the Queen's assent

58 When a proposed law passed by both Houses of the Parliament is presented to the Governor General for the Queen's assent, he shall declare, according to his discretion, but subject to this constitution, that he assents in the Queen's name, or that he withholds assent, or that he reserves the law for the Queen's pleasure

The Governor-General may return to the House in which it originated any proposed law so presented to him, and may transmit

therewith any amendments which he may recommend, and the Houses may deal with the recommendation.

59. The Queen may disallow any law within one year from the Governor-General's assent, and such disallowance on being made known by the Governor-General by speech or message to each of the Houses of the Parliament, or by proclamation, shall annul the law from the day when the disallowance is so made known.

60. A proposed law reserved for the Queen's pleasure shall not have any force unless and until within 2 years from the day on which it was presented to the Governor-General for the Queen's assent the Governor-General makes known, by speech or message to each of the Houses of the Parliament, or by proclamation, that it has received the Queen's assent.

## CHAPTER II.—THE EXECUTIVE GOVERNMENT

61. The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative, and extends to the execution and maintenance of this constitution, and of the laws of the Commonwealth.

62. There shall be a Federal Executive Council to advise the Governor-General in the government of the Commonwealth, and the members of the Council shall be chosen and summoned by the Governor-General and sworn as Executive Councillors, and shall hold office during his pleasure.

63. The provisions of this constitution referring to the Governor-General in Council shall be construed as referring to the Governor-General acting with the advice of the Federal Executive Council.

64. The Governor-General may appoint officers to administer such departments of State of the Commonwealth as the Governor-General in Council may establish.

Such officers shall hold office during the pleasure of the Governor-General. They shall be members of the Federal Executive Council, and shall be the Queen's Ministers of State for the Commonwealth.

After the first general election no Minister of State shall hold office for a longer period than 3 months unless he is or becomes a senator or a member of the House of Representatives.

65. Until the Parliament otherwise provides, the Ministers of State shall not exceed seven in number, and shall hold such offices as the Parliament prescribes, or, in the absence of provision, as the Governor-General directs.

66. There shall be payable to the Queen, out of the Consolidated Revenue Fund of the Commonwealth, for the salaries of the Ministers of State, an annual sum which, until the Parliament otherwise provides, shall not exceed £12,000 a year.

67 Until the Parliament otherwise provides, the appointment and removal of all other officers of the Executive Government of the Commonwealth shall be vested in the Governor-General in Council, unless the appointment is delegated by the Governor-General in Council or by a law of the Commonwealth to some other authority

68 The command in chief of the naval and military forces of the Commonwealth is vested in the Governor-General as the Queen's representative

69 On a date or dates to be proclaimed by the Governor-General after the establishment of the Commonwealth the following departments of the public service in each State shall become transferred to the Commonwealth —

Posts, telegraphs and telephones

Naval and military defence

Lighthouses, lightships, beacons and buoys

Quarantine

But the departments of customs and of excise in each State shall become transferred to the Commonwealth on its establishment

70 In respect of matters which, under this constitution, pass to the Executive Government of the Commonwealth, all powers and functions which at the establishment of the Commonwealth are vested in the Governor of a Colony, or in the Governor of a Colony with the advice of his Executive Council, or in any authority of a Colony, shall vest in the Governor-General, or in the Governor-General in Council, or in the authority exercising powers under the Commonwealth as the case requires

### CHAPTER III—THE JUDICATURE

71 The judicial power of the Commonwealth shall be vested in a Federal Supreme Court, to be called "the High Court of Australia," and in such other federal courts as the Parliament creates, and in such other courts as it invests with federal jurisdiction. The High Court shall consist of a Chief Justice, and so many other justices, not less than two, as the Parliament prescribes

72 The justices of the High Court and of the other courts created by the Parliament—

(i) Shall be appointed by the Governor-General in Council

(ii) Shall not be removed except by the Governor-General in Council, on an address from both Houses of the Parliament in the same session, praying for such removal on the ground of proved misbehaviour or incapacity

(iii) Shall receive such remuneration as the Parliament may fix, but the remuneration shall not be diminished during their continuance in office

73. The High Court shall have jurisdiction, with such exceptions and subject to such regulations as the Parliament prescribes, to hear and determine appeals from all judgments, decrees, orders, and sentences—

(i) Of any justice or justices exercising the original jurisdiction of the High Court ;

(ii) Of any other federal court, or court exercising federal jurisdiction ; or of the Supreme Court of any State, or of any other court of any State from which at the establishment of the Commonwealth an appeal lies to the Queen in Council ;

(iii) Of the Inter-State Commission, but as to questions of law only ;

and the judgment of the High Court in all such cases shall be final and conclusive.

But no exception or regulation prescribed by the Parliament shall prevent the High Court from hearing and determining any appeal from the Supreme Court of a State in any matter in which at the establishment of the Commonwealth an appeal lies from such Supreme Court to the Queen in Council.

Until the Parliament otherwise provides, the conditions of and restrictions on appeals to the Queen in Council from the Supreme Courts of the several States shall be applicable to appeals from them to the High Court.

74. No appeal shall be permitted to the Queen in Council from a decision of the High Court upon any question, howsoever arising, as to the limits *inter se* of the constitutional powers of the Commonwealth and those of any State or States, or as to the limits *inter se* of the constitutional powers of any two or more States, unless the High Court shall certify that the question is one which ought to be determined by Her Majesty in Council.

The High Court may so certify if satisfied that for any special reason the certificate should be granted, and thereupon an appeal shall lie to Her Majesty in Council on the question without further leave.

Except as provided in this section, this constitution shall not impair any right which the Queen may be pleased to exercise by virtue of her royal prerogative to grant special leave of appeal from the High Court to Her Majesty in Council. The Parliament may make laws limiting the matters in which such leave may be asked, but proposed laws containing any such limitation shall be reserved by the Governor-General for Her Majesty's pleasure.

75. In all matters—

(i) Arising under any treaty ;

(ii) Affecting consuls or other representatives of other countries ;

(iii) In which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party ;



(iv) Between States, or between residents of different States, or between a State and a resident of another State,

(v) In which a writ of mandamus or prohibition or an injunction is sought against an officer of the Commonwealth,

the High Court shall have original jurisdiction

76 The Parliament may make laws conferring original jurisdiction on the High Court in any matter—

(i) Arising under this constitution, or involving its interpretation

(ii) Arising under any laws made by the Parliament

(iii) Of Admiralty and maritime jurisdiction

(iv) Relating to the same subject matter claimed under the laws of different States

77 With respect to any of the matters mentioned in the last two sections the Parliament may make laws—

(i) Defining the jurisdiction of any federal court other than the High Court

(ii) Defining the extent to which the jurisdiction of any federal court shall be exclusive of that which belongs to or is invested in the courts of the States

(iii) Investing any court of a State with federal jurisdiction

78 The Parliament may make laws conferring rights to proceed against the Commonwealth or a State in respect of matters within the limits of the judicial power

79 The federal jurisdiction of any court may be exercised by such number of judges as the Parliament prescribes

80 The trial on indictment of any offence against any law of the Commonwealth shall be by jury, and every such trial shall be held in the State where the offence was committed, and if the offence was not committed within any State the trial shall be held at such place or places as the Parliament prescribes

#### CHAPTER IV—FINANCE AND TRADE

81 All revenues or moneys raised or received by the Executive Government of the Commonwealth shall form one Consolidated Revenue Fund, to be appropriated for the purposes of the Commonwealth in the manner and subject to the charges and liabilities imposed by this constitution

82 The costs, charges, and expenses incident to the collection, management, and receipt of the Consolidated Revenue Fund shall form the first charge thereon, and the revenue of the Commonwealth shall in the first instance be applied to the payment of the expenditure of the Commonwealth.

83. No money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law.

But until the expiration of one month after the first meeting of the Parliament the Governor-General in Council may draw from the Treasury and expend such moneys as may be necessary for the maintenance of any department transferred to the Commonwealth and for the holding of the first elections for the Parliament.

84. When any department of the public service of a State becomes transferred to the Commonwealth, all officers of the department shall become subject to the control of the Executive Government of the Commonwealth.

Any such officer who is not retained in the service of the Commonwealth shall, unless he is appointed to some other office of equal emolument in the public service of the State, be entitled to receive from the State any pension, gratuity, or other compensation, payable under the law of the State on the abolition of his office.

Any such officer who is retained in the service of the Commonwealth shall preserve all his existing and accruing rights, and shall be entitled to retire from office at the time, and on the pension or retiring allowance, which would be permitted by the law of the State if his service with the Commonwealth were a continuation of his service with the State. Such pension or retiring allowance shall be paid to him by the Commonwealth; but the State shall pay to the Commonwealth a part thereof, to be calculated on the proportion which his term of service with the State bears to his whole term of service, and for the purpose of the calculation his salary shall be taken to be that paid to him by the State at the time of the transfer.

Any officer who is, at the establishment of the Commonwealth, in the public service of a State, and who is, by consent of the Governor of the State with the advice of the Executive Council thereof, transferred to the public service of the Commonwealth, shall have the same rights as if he had been an officer of a department transferred to the Commonwealth and were retained in the service of the Commonwealth.

85. When any department of the public service of a State is transferred to the Commonwealth—

(i) All property of the State of any kind, used exclusively in connexion with the department, shall become vested in the Commonwealth; but, in the case of the departments controlling customs and excise and bounties, for such time only as the Governor-General in Council may declare to be necessary.

(ii) The Commonwealth may acquire any property of the State of any kind used, but not exclusively used, in connexion with the department; the value thereof shall, if no agreement can be made, be ascertained in, as nearly as may be, the manner in which the value of the land, or of an interest in land, taken by the State for public

purposes is ascertained under the law of the State in force at the establishment of the Commonwealth

(iii) The Commonwealth shall compensate the State for the value of any property passing to the Commonwealth under this section, if no agreement can be made as to the mode of compensation, it shall be determined under laws to be made by the Parliament

(iv) The Commonwealth shall, at the date of the transfer, assume the current obligations of the State in respect of the department transferred

86 On the establishment of the Commonwealth, the collection and control of duties of customs and of excise, and the control of the payment of bounties, shall pass to the Executive Government of the Commonwealth

87 During a period of 10 years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, of the net revenue of the Commonwealth from duties of customs and of excise not more than one-fourth shall be applied annually by the Commonwealth towards its expenditure

The balance shall, in accordance with this constitution, be paid to the several States, or applied towards the payment of interest on debts of the several States taken over by the Commonwealth

88 Uniform duties of customs shall be imposed within 2 years after the establishment of the Commonwealth

89 Until the imposition of uniform duties of customs—

(i) The Commonwealth shall credit to each State the revenues collected therein by the Commonwealth

(ii) The Commonwealth shall debit to each State—

(a) The expenditure therein of the Commonwealth incurred solely for the maintenance or continuance, as at the time of transfer, of any department transferred from the State to the Commonwealth

(b) The proportion of the State, according to the number of its people, in the other expenditure of the Commonwealth

(iii) The Commonwealth shall pay to each State month by month the balance (if any) in favour of the State

90 On the imposition of uniform duties of customs the power of the Parliament to impose duties of customs and of excise and to grant bounties on the production or export of goods, shall become exclusive

On the imposition of uniform duties of customs all laws of the several States imposing duties of customs or of excise, or offering bounties on the production or export of goods, shall cease to have effect, but any grant or agreement for any such bounty lawfully made by or under the authority of the Government of any State

shall be taken to be good if made before the 30th day of June, 1898, and not otherwise.

91. Nothing in this constitution prohibits a State from granting any aid to or bounty on mining for gold, silver, or other metals, nor from granting, with the consent of both Houses of the Parliament of the Commonwealth expressed by resolution, any aid to or bounty on the production or export of goods.

92. On the imposition of uniform duties of customs, trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free.

But notwithstanding anything in this constitution, goods imported before the imposition of uniform duties of customs into any State, or into any Colony which, whilst the goods remain therein, becomes a State, shall, on thence passing into another State within 2 years after the imposition of such duties, be liable to any duty chargeable on the importation of such goods into the Commonwealth, less any duty paid in respect of the goods on their importation.

93. During the first 5 years after the imposition of uniform duties of customs, and thereafter until the Parliament otherwise provides—

(i) The duties of customs chargeable on goods imported into a State and afterwards passing into another State for consumption, and the duties of excise paid on goods produced or manufactured in a State and afterwards passing into another State for consumption, shall be taken to have been collected not in the former but in the latter State.

(ii) Subject to the last sub-section, the Commonwealth shall credit revenue, debit expenditure, and pay balances to the several States as prescribed for the period preceding the imposition of uniform duties of customs.

94. After 5 years from the imposition of uniform duties of customs, the Parliament may provide, on such basis as it deems fair, for the monthly payment to the several States of all surplus revenue of the Commonwealth.

95. Notwithstanding anything in this constitution, the Parliament of the State of Western Australia, if that State be an original State, may, during the first 5 years after the imposition of uniform duties of customs, impose duties of customs on goods passing into that State and not originally imported from beyond the limits of the Commonwealth; and such duties shall be collected by the Commonwealth.

But any duty so imposed on any goods shall not exceed during the first of such years the duty chargeable on the goods under the law of Western Australia in force at the imposition of uniform duties, and shall not exceed during the second, third, fourth and fifth of such years respectively, four-fifths, three-fifths, two-fifths, and one-fifth of such latter duty, and all duties imposed under this section

shall cease at the expiration of the fifth year after the imposition of uniform duties

If at any time during the 5 years the duty on any goods under this section is higher than the duty imposed by the Commonwealth on the importation of the like goods, then such higher duty shall be collected on the goods when imported into Western Australia from beyond the limits of the Commonwealth

96 During a period of 10 years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, *the Parliament may grant financial assistance to any State on such terms and conditions as the Parliament thinks fit*

97 *Until the Parliament otherwise provides, the laws in force in any Colony which has become or becomes a State with respect to the receipt of revenue and the expenditure of money on account of the Government of the Colony, and the review and audit of such receipt and expenditure, shall apply to the receipt of revenue and the expenditure of money on account of the Commonwealth in the State in the same manner as if the Commonwealth, or the Government or an officer of the Commonwealth, were mentioned whenever the Colony, or the Government or an officer of the Colony, is mentioned*

98 The power of the Parliament to make laws with respect to trade and commerce extends to navigation and shipping, and to railways the property of any State

99 The Commonwealth shall not, by any law or regulation of trade, commerce or revenue, give preference to one State or any part thereof over another State or any part thereof

100 The Commonwealth shall not, by any law or regulation of trade or commerce abridge the right of a State or of the residents therein to the reasonable use of the waters of rivers for conservation or irrigation

101 There shall be an Inter State Commission, with such powers of adjudication and administration as the Parliament deems necessary for the execution and maintenance, within the Commonwealth of the provisions of this constitution relating to trade and commerce, and of all laws made thereunder

102 The Parliament may by any law with respect to trade or commerce forbid, as to railways, any preference or discrimination by any State, or by any authority constituted under a State, if such preference or discrimination is undue and unreasonable, or unjust to any State, due regard being had to the financial responsibilities incurred by any State in connexion with the construction and maintenance of its railways But no preference or discrimination shall within the meaning of this section be taken to be undue and unreasonable, or unjust to any State, unless so adjudged by the Inter State Commission

103. The members of the Inter-State Commission—

(i) Shall be appointed by the Governor-General in Council.

(ii) Shall hold office for 7 years, but may be removed within that time by the Governor-General in Council, on an address from both Houses of the Parliament in the same session praying for such removal on the ground of proved misbehaviour or incapacity.

(iii) Shall receive such remuneration as the Parliament may fix ; but such remuneration shall not be diminished during their continuance in office.

104. Nothing in this constitution shall render unlawful any rate for the carriage of goods upon a railway, the property of a State, if the rate is deemed by the *Inter-State Commission* to be necessary for the development of the territory of the State, and if the rate applies equally to goods within the State and to goods passing into the State from other States.

105. The Parliament may take over from the States their public debts, or a proportion thereof according to the respective numbers of their people as shown by the latest statistics of the Commonwealth, and may convert, renew, or consolidate such debts, or any part thereof ; and the States shall indemnify the Commonwealth in respect of the debts taken over, and thereafter the interest payable in respect of the debts shall be deducted and retained from the portions of the surplus revenue of the Commonwealth payable to the several States, or if such surplus is insufficient, or if there is no surplus, then the deficiency or the whole amount shall be paid by the several States.

105A.—(1.) The Commonwealth may make agreements with the States with respect to the public debts of the States, including—

(a) the taking over of such debts by the Commonwealth ;

(b) the management of such debts ;

(c) the payment of interest and the provision and management of sinking funds in respect of such debts ;

(d) the consolidation, renewal, conversion, and redemption of such debts ;

(e) the indemnification of the Commonwealth by the States in respect of debts taken over by the Commonwealth ; and

(f) the borrowing of money by the States or by the Commonwealth, or by the Commonwealth for the States.

(2.) The Parliament may make laws for validating any such agreement made before the commencement of this section.

(3.) The Parliament may make laws for the carrying out by the parties thereto of any such agreement.

(4.) Any such agreement may be varied or rescinded by the parties thereto.

(5) Every such agreement and any such variation thereof shall be binding upon the Commonwealth and the States parties thereto notwithstanding anything contained in this constitution or the constitution of the several States or in any law of the Parliament of the Commonwealth or of any State

(6) The powers conferred by this section shall not be construed as being limited in any way by the provisions of section 105 of this constitution

## CHAPTER V—THE STATES

106 The constitution of each State of the Commonwealth shall, subject to this constitution, continue as at the establishment of the Commonwealth or as at the admission or establishment of the State, as the case may be, until altered in accordance with the constitution of the State

107 Every power of the Parliament of a Colony which has become or becomes a State, shall, unless it is by this constitution exclusively vested in the Parliament of the Commonwealth or withdrawn from the Parliament of the State, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be

108 Every law in force in a Colony which has become or becomes a State, and relating to any matter within the powers of the Parliament of the Commonwealth shall subject to this constitution, continue in force in the State and until provision is made in that behalf by the Parliament of the Commonwealth, the Parliament of the State shall have such powers of alteration and of repeal in respect of any such law as the Parliament of the Colony had until the Colony became a State

109 When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid

110 The provisions of this constitution relating to the Governor of a State extend and apply to the Governor for the time being of the State, or other chief executive officer or administrator of the Government of the State

111 The Parliament of a State may surrender any part of the State to the Commonwealth, and upon such surrender, and the acceptance thereof by the Commonwealth, such part of the State shall become subject to the exclusive jurisdiction of the Commonwealth

112 After uniform duties of customs have been imposed, a State may levy on imports or exports, or on goods passing into or out of the State, such charges as may be necessary for executing the inspection laws of the State, but the net produce of all charges so levied shall be for the use of the Commonwealth, and any such

inspection laws may be annulled by the Parliament of the Commonwealth.

113. All fermented, distilled, or other intoxicating liquids passing into any State or remaining therein for use, consumption, sale, or storage, shall be subject to the laws of the State as if such liquids had been produced in the State.

114. A State shall not, without the consent of the Parliament of the Commonwealth, raise or maintain any naval or military force, or impose any tax on property of any kind belonging to the Commonwealth, nor shall the Commonwealth impose any tax on property of any kind belonging to a State.

115. A State shall not coin money, nor make anything but gold and silver coin a legal tender in payment of debts.

116. The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

117. A subject of the Queen, resident in any State, shall not be subject in any other State to any disability or discrimination which would not be equally applicable to him if he were a subject of the Queen resident in such other State.

118. Full faith and credit shall be given throughout the Commonwealth to the laws, the public Acts and records, and the judicial proceedings of every State.

119. The Commonwealth shall protect every State against invasion and, on the application of the Executive Government of the State, against domestic violence.

120. Every State shall make provision for the detention in its prisons of persons accused or convicted of offences against the laws of the Commonwealth, and for the punishment of persons convicted of such offences, and the Parliament of the Commonwealth may make laws to give effect to this provision.

## CHAPTER VI.—NEW STATES

121. The Parliament may admit to the Commonwealth or establish new States, and may upon such admission or establishment make or impose such terms and conditions, including the extent of representation in either House of the Parliament, as it thinks fit.

122. The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such



territory in either House of the Parliament to the extent and on the terms which it thinks fit

123 The Parliament of the Commonwealth may, with the consent of the Parliament of a State, and the approval of the majority of the electors of the State voting upon the question, increase, diminish, or otherwise alter the limits of the State, upon such terms and conditions as may be agreed on, and may, with the like consent, make provision respecting the effect and operation of any increase or diminution or alteration of territory in relation to any State affected

124 A new State may be formed by separation of territory from a State, but only with the consent of the Parliament thereof, and a new State may be formed by the union of two or more States or parts of States, but only with the consent of the Parliaments of the States affected

## CHAPTER VII — MISCELLANEOUS

125 The seat of Government of the Commonwealth shall be determined by the Parliament, and shall be within territory which shall have been granted to or acquired by the Commonwealth, and shall be vested in and belong to the Commonwealth, and shall be in the State of New South Wales, and be distant not less than 100 miles from Sydney

Such territory shall contain an area of not less than 100 square miles, and such portion thereof as shall consist of Crown lands shall be granted to the Commonwealth without any payment *therefor*

The Parliament shall sit at Melbourne until it meet at the seat of Government

126 The Queen may authorise the Governor-General to appoint any person, or any persons jointly or severally, to be his deputy or deputies within any part of the Commonwealth, and in that capacity to exercise during the pleasure of the Governor-General such powers and functions of the Governor-General as he thinks fit to assign to such deputy or deputies, subject to any limitations expressed or directions given by the Queen, but the appointment of such deputy or deputies shall not affect the exercise by the Governor-General himself of any power or function

127 In reckoning the numbers of the people of the Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives shall not be counted

## CHAPTER VIII — ALTERATION OF THE CONSTITUTION

128 This constitution shall not be altered except in the following manner .—

The proposed law for the alteration thereof must be passed

by an absolute majority of each House of the Parliament, and not less than 2 nor more than 6 months after its passage through both Houses the proposed law shall be submitted in each State to the electors qualified to vote for the election of members of the House of Representatives.

But if either House passes any such proposed law by an absolute majority, and the other House rejects or fails to pass it or passes it with any amendment to which the first-mentioned House will not agree, and if after an interval of 3 months the first-mentioned House in the same or the next session again passes the proposed law by an absolute majority with or without any amendment which has been made or agreed to by the other House, and such other House rejects or fails to pass it or passes it with any amendment to which the first-mentioned House will not agree, the Governor-General may submit the proposed law as last proposed by the first-mentioned House, and either with or without any amendments subsequently agreed to by both Houses, to the electors in each State qualified to vote for the election of the House of Representatives.

*When a proposed law is submitted to the electors the vote shall be taken in such manner as the Parliament prescribes. But until the qualification of electors of members of the House of Representatives becomes uniform throughout the Commonwealth, only one-half the electors voting for and against the proposed law shall be counted in any State in which adult suffrage prevails.*

And if in a majority of the States a majority of the electors voting approve the proposed law, and if a majority of all the electors voting also approve the proposed law, it shall be presented to the Governor-General for the Queen's assent.

No alteration diminishing the proportionate representation of any State in either House of the Parliament, or the minimum number of representatives of a State in the House of Representatives, or increasing, diminishing, or otherwise altering the limits of the State, or in any manner affecting the provision of the constitution in relation thereto, shall become law unless the majority of the electors voting in that State approve the proposed law.

## SCHEDULE

### OATH

I, *A.B.*, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, her heirs and successors according to law. So help me God!

### AFFIRMATION

I, *A.B.*, do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, her heirs and successors according to law.

(NOTE — *The name of the King or Queen of the United Kingdom of Great Britain and Ireland for the time being is to be substituted from time to time*)

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## 2. Letters Patent, 1900 (as amended 1920).

*Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, Empress of India  
To all to whom these presents shall come, Greeting*

Whereas, by an Act of Parliament passed on the 9th day of July, 1900,<sup>(1)</sup> in the 64th year of our reign, intituled "An Act to constitute the Commonwealth of Australia," it is enacted that  
[Here section 3 is quoted]

And whereas we did on the 17th day of September, 1900, by and with the advice of our Privy Council, declare by proclamation<sup>(2)</sup> that, on and after the 1st day of January, 1901, the people of New South Wales Victoria, South Australia, Queensland, and Tasmania and also Western Australia, should be united in a Federal Commonwealth under the name of "the Commonwealth of Australia" And whereas by the said recited Act certain powers, functions, and authorities were declared to be vested in the Governor General And whereas we are desirous of making effectual and permanent provision for the office of Governor-General and Commander-in-Chief in and over our said Commonwealth of Australia, without making new Letters Patent on each demise of the said office Now know ye that we have thought fit to constitute, order, and declare, and do by these presents constitute order, and declare, that there shall be a Governor General and Commander-in Chief (hereinafter called "the Governor-General") in and over our Commonwealth of Australia (hereinafter called "our said Commonwealth"), and that the person who shall fill the said office of Governor General shall be from time to time appointed by Commission under our Sign Manual and Signet And we do hereby authorise and command our said Governor General to do and execute, in due manner, all things that shall belong to his said command, and to the trust we have reposed in him, according to the several powers and authorities granted or appointed him by virtue of "The Commonwealth of Australia Constitution Act, 1900," and of these present Letters Patent and of such Commission as may be issued to him under our Sign Manual and Signet, and according to such Instructions as may from time to time be given to him, under our Sign Manual and Signet, or by our Order in our Privy Council, or by us through one of our Principal Secretaries of State, and to such laws as shall hereafter be in force in our said Commonwealth

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(1) Page 57

(2) *State Papers* Vol XCIV, page 130

2. There shall be a Great Seal of and for our said Commonwealth which our said Governor-General shall keep and use for sealing all things whatsoever that shall pass the said Great Seal: Provided that until a Great Seal shall be provided, the private seal of our said Governor-General may be used as the Great Seal of the Commonwealth of Australia.

3. The Governor-General may constitute and appoint, in our name and on our behalf, all such judges, commissioners, justices of the peace, and other necessary officers and Ministers of our said Commonwealth, as may be lawfully constituted or appointed by us.

4. The Governor-General, so far as we ourselves lawfully may, upon sufficient cause to him appearing, may remove from his office, or suspend from the exercise of the same, any person exercising any office of our said Commonwealth, under or by virtue of any commission or warrant granted, or which may be granted, by us in our name or under our authority.

5. The Governor-General may on our behalf exercise all powers under "The Commonwealth of Australia Constitution Act, 1900," or otherwise in respect of the summoning, proroguing, or dissolving the Parliament of our said Commonwealth.

6. And whereas by "The Commonwealth of Australia Constitution Act, 1900," it is amongst other things enacted, that we may authorise the Governor-General to appoint any person or persons, jointly or severally, to be his deputy or deputies within any part of our Commonwealth, and in that capacity to exercise, during the pleasure of the Governor-General, such powers and functions of the said Governor-General as he thinks fit to assign to such deputy or deputies, subject to any limitations expressed or directions given by us: Now we do hereby authorise and empower our said Governor-General, subject to such limitations and directions as aforesaid, to appoint any person or persons, jointly or severally, to be his deputy or deputies within any part of our said Commonwealth of Australia, and in that capacity to exercise, during his pleasure, such of his powers and functions as he may deem it necessary or expedient to assign to him or them: Provided always, that the appointment of such a deputy or deputies shall not affect the exercise by the Governor-General himself of any power or function.

7. And we do hereby declare our pleasure to be that, in the event of the death, incapacity, removal or absence of the Governor-General out of our said Commonwealth, all and every the powers and authorities granted to him shall, until our further pleasure is signified therein, be vested in such person as may be appointed by us under our Sign Manual and Signet to be our Lieutenant-Governor of our said Commonwealth; or if there shall be no such Lieutenant-Governor in our said Commonwealth, then in such person or persons as may be appointed by us under our Sign Manual and Signet to

administer the Government of the same Provided always that the absence of the Governor-General from our said Commonwealth for the purpose of visiting our Territory of Papua or any other territory now or hereafter placed under the administration of the Government of our said Commonwealth shall not be deemed absence out of our said Commonwealth within the meaning of this clause of these our Letters Patent No such powers or authorities shall vest in such Lieutenant Governor, or such other person or persons, until he or they shall have taken the oaths appointed to be taken by the Governor-General of our said Commonwealth, and in the manner provided by the Instructions<sup>(1)</sup> accompanying these our Letters Patent, or any other Instructions amending the same

8 And we do hereby require and command all our officers and Ministers, civil and military and all other the inhabitants of our said Commonwealth to be obedient, aiding, and assisting unto our said Governor General, or, in the event of his death, incapacity or absence, to such person or persons as may, from time to time, under the provisions of these our Letters Patent, administer the Government of our said Commonwealth

9 And we do hereby reserve to ourselves, our heirs and successors, full power and authority from time to time to revoke, alter, or amend these our Letters Patent as to us or them shall seem meet

10 And we do further direct and enjoin that these our Letters Patent shall be read and proclaimed at such place or places as our said Governor General shall think fit within our said Commonwealth of Australia

In witness whereof we have caused these our Letters to be made Patent Witness ourself at Westminster, the 29th day of October, in the 64th year of our reign

By warrant under the Queen's Sign Manual

MUIR MACKENZIE

### 3 Royal Instructions, 1900 (as amended 1902 and 1920)

VICTORIA R I

*Whereas by certain Letters Patent bearing even date<sup>(1)</sup> herewith, we have constituted, ordered, and declared that there shall be a Governor-General and Commander-in Chief (therein and hereinafter called "the Governor-General"), in and over our Commonwealth of Australia (therein and hereinafter called "our said Commonwealth") And we have thereby authorised and commanded our said Governor-General*

<sup>(1)</sup> *Infra*

<sup>(2)</sup> Page 84

*to do and execute in due manner all things that shall belong to his said command, and to the trust we have reposed in him, according to the several powers and authorities granted or appointed him by virtue of the said Letters Patent and of such Commission as may be issued to him under our Sign Manual and Signet, and according to such Instructions as may from time to time be given to him, under our Sign Manual and Signet, or by our Order in our Privy Council, or by us through one of our Principal Secretaries of State, and to such laws as shall hereafter be in force in our said Commonwealth. Now, therefore, we do, by these our Instructions under our Sign Manual and Signet, declare our pleasure to be as follows :—*

1. Our first appointed Governor-General shall, with all due solemnity, cause our Commission, under our Sign Manual and Signet, appointing our said Governor-General, to be read and published in the presence of our Governors, or in their absence of our Lieutenant-Governors of our Colonies of New South Wales, Victoria, South Australia, Queensland, Tasmania, and Western Australia and such of the members of the Executive Council, judges, and members of the Legislatures of our said Colonies as are able to attend.

2. Our said Governor-General of our said Commonwealth shall take the oath of allegiance in the form provided by an Act passed in the session holden in the 31st and 32nd years of our reign, intituled "An Act to amend the Law relating to Promissory Oaths<sup>(1)</sup>;" and likewise the usual oath for the due execution of the office of our Governor-General in and over our said Commonwealth, and for the due and impartial administration of justice; which oaths our said Governor and Commander-in-Chief of our Colony of New South Wales, or, in his absence, our Lieutenant-Governor or other officer administering the Government of our said Colony, shall and he is hereby required to tender and administer unto him.

3. Every Governor-General, and every other officer appointed to administer the Government of our said Commonwealth after our said first appointed Governor-General, shall, with all due solemnity, cause our Commission, under our Sign Manual and Signet, appointing our said Governor-General, to be read and published in the presence of the Chief Justice of the High Court of Australia, or some other judge of the said court, or in the presence of the Chief Justice or some other judge of the Supreme Court of any of the States of our said Commonwealth.

4. Every Governor-General, and every other officer appointed to administer the Government of our said Commonwealth after our said first appointed Governor-General, shall take the oath of allegiance in the form provided by an Act passed in the session holden in the 31st and 32nd years of our reign, intituled "An Act to amend

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<sup>(1)</sup> 31 & 32 Vict., c. 72.

the Law relating to Promissory Oaths," and likewise the usual oath for the due execution of the office of our Governor General in and over our said Commonwealth, and for the due and impartial administration of justice, which oaths the Chief Justice of the High Court of Australia, or some other judge of the said court or the Chief Justice or some other judge of the Supreme Court of any of the States of our said Commonwealth, shall and he is hereby required to tender and administer unto him or them

5 And we do authorise and require our said Governor General from time to time, by himself or by any other person to be authorised by him in that behalf, to administer to all and to every persons or person, as he shall think fit, who shall hold any office or place of trust or profit in our said Commonwealth, the said oath of allegiance, together with such other oath or oaths as may from time to time be prescribed by any laws or statutes in that behalf made and provided

6 And we do require our said Governor General to communicate forthwith to the members of the Executive Council for our said Commonwealth these our Instructions, and likewise all such others from time to time, as he shall find convenient for our service to be imparted to them

7 Our said Governor General is to take care that all laws assented to by him in our name, or reserved for the signification of our pleasure thereon shall, when transmitted by him, be fairly abstracted in the margins, and be accompanied, in such cases as may seem to him necessary, with such explanatory observations as may be required to exhibit the reasons and occasions for proposing such laws, and he shall also transmit fair copies of the journals and minutes of the proceedings of the Parliament of our said Commonwealth, which he is to require from the clerks, or other proper officers in that behalf, of the said Parliament

8 And we do further authorise and empower our said Governor-General, as he shall see occasion, in our name and on our behalf when any crime or offence against the laws of our Commonwealth has been committed for which the offender may be tried within our said Commonwealth, to grant a pardon to any accomplice in such crime or offence who shall give such information as shall lead to the conviction of the principal offender, or of any one of such offenders, if more than one, and further, to grant to any offender convicted of any such crime or offence in any court, or before any judge justice, or magistrate, within our said Commonwealth, a pardon either free or subject to lawful conditions, or any respite of the execution of the sentence of any such offender, for such period as to our said Governor-General may seem fit, and to remit any fines, penalties, or forfeitures which may become due and payable to us Provided always, that our said Governor General shall not in any case, except where the offence has been of a political nature, make it a condition

of any pardon or remission of sentence that the offender shall be banished from or shall absent himself from our said Commonwealth. And we do hereby direct and enjoin that our said Governor-General shall not pardon or reprieve any such offender without first receiving in capital cases the advice of the Executive Council for our said Commonwealth, and in other cases the advice of one, at least, of his Ministers ; and in any case in which such pardon or reprieve might directly affect the interests of our Empire, or of any country or place beyond the jurisdiction of the Government of our said Commonwealth, our said Governor-General shall, before deciding as to either pardon or reprieve, take those interests specially into his own personal consideration in conjunction with such advice as aforesaid.

9. Except for the purpose of visiting our Territory of Papua, or any other territory now or hereafter placed under the administration of the Government of our said Commonwealth, the Governor-General shall not, upon any pretence whatever, quit our said Commonwealth without having first obtained leave from us for so doing, under our Sign Manual and Signet, or through one of our Principal Secretaries of State.

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## STATES OF AUSTRALIA

According to the *Official Year Book of New South Wales*, 1928-9 (page 32), the constitution of that State is not framed completely in "The State Constitution Act" of 1902 <sup>(1)</sup> and is not entirely written, but is drawn from seven diverse sources, viz. : certain Imperial statutes ; the Letters Patent, and Instructions to the Governor ; an element of inherited English law ; some Federal statutes ; sundry State statutes ; numerous legal decisions ; and a large element of English and local convention. The general position in regard to the other States of the Commonwealth is somewhat similar, but their constitutions are not identical. Letters Patent and Instructions have, however, been issued for each State, corresponding in large measure with the subjoined documents for New South Wales.

One of the principal differences between the constitutions of the various States is in respect of the Upper House of Parliament or Legislative Council. In New South Wales, Victoria, South Australia, Western Australia and Tasmania the Legislative Council is elective, though the details of the elective basis vary, while in Queensland there is no Upper House.

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(1) Page 90.



## NEW SOUTH WALES

- 1 Act of the State Parliament to consolidate the Acts relating to the Constitution —August 18, 1902 (as amended to December 11, 1936)
- 2 Letters Patent constituting the Office of Governor — Westminster, October 29, 1900

Text in *Statutory Rules and Orders* revised to December 31 1903  
Vol I Australia page 6

*Amendment*

## LETTERS PATENT

Westminster February 26 1935 . Text in *Statutory Rules and Orders* 1935 page 1781

- 3 Royal Instructions to the Governor —St James's October 29, 1900

*Amendments*

## ADDITIONAL INSTRUCTIONS

St James's December 1 1909

St James's February 26 1935

. . .

- I Act of Parliament 1902 (as amended to 1936)

*Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same as follows —*

## PART I —PRELIMINARY

- 1 This Act may be cited as *The Constitution Act 1902* and is divided into parts and divisions as follows —

\* \* \*

- 2 (1) The Acts mentioned in the first schedule to this Act are, to the extent therein expressed hereby repealed

(2) All persons appointed under the Acts hereby repealed and holding office at the time of the passing of this Act shall be deemed to have been appointed hereunder

(3) All standing rules and orders made under the authority of the Acts hereby repealed and being in force at the commencement of this Act shall be deemed to have been made under the authority of this Act

3. In this Act, unless the context or subject-matter otherwise indicates or requires—

“The Legislature” means His Majesty the King, with the advice and consent of the Legislative Council and Legislative Assembly.

4. For the purposes of this Act, the boundaries of New South Wales shall comprise all that portion of Australia lying between the 129th and 154th degrees of east longitude, reckoning from the meridian of Greenwich, and northward of the 40th degree of south latitude, including all the islands adjacent in the Pacific Ocean within the latitude aforesaid, and also including Lord Howe Island, save and except the territories comprised within the boundaries of South Australia, Victoria, and Queensland, as at present established.

## PART II.—POWERS OF THE LEGISLATURE

5. The Legislature shall, subject to the provisions of “The Commonwealth of Australia Constitution Act,”<sup>(1)</sup> have power to make laws for the peace, welfare, and good government of New South Wales in all cases whatsoever :

Provided that all bills for appropriating any part of the public revenue, or for imposing any new rate, tax or impost, shall originate in the Legislative Assembly.

5A. (1) If the Legislative Assembly passes any bill appropriating revenue or moneys for the ordinary annual services of the Government, and the Legislative Council rejects or fails to pass it or returns the bill to the Legislative Assembly with a message suggesting any amendment to which the Legislative Assembly does not agree, the Legislative Assembly may direct that the bill, with or without any amendment suggested by the Legislative Council, be presented to the Governor for the signification of His Majesty’s pleasure thereon, and shall become an Act of the Legislature upon the royal assent being signified thereto, notwithstanding that the Legislative Council has not consented to the bill.

(2) The Legislative Council shall be taken to have failed to pass any such bill, if the bill is not returned to the Legislative Assembly within one month after its transmission to the Legislative Council and the session continues during such period.

(3) If a bill which appropriates revenue or moneys for the ordinary annual services of the Government becomes an Act under the provisions of this section, any provision in such Act dealing with any matter other than such appropriation shall be of no effect.

5B. (1) If the Legislative Assembly passes any bill other than a bill to which section 5A of this Act applies, and the Legislative Council rejects or fails to pass it or passes it with any amendment

to which the Legislative Assembly does not agree, and if after an interval of 3 months the Legislative Assembly in the same session or in the next session again passes the bill with or without any amendment which has been made or agreed to by the Legislative Council and the Legislative Council rejects or fails to pass it or passes it with any amendment to which the Legislative Assembly does not agree, and if after a free conference between managers there is not agreement between the Legislative Council and the Legislative Assembly, the Governor may convene a joint sitting of the members of the Legislative Council and the members of the Legislative Assembly

The members present at the joint sitting may deliberate upon the bill as last proposed by the Legislative Assembly and upon any amendments made by the Legislative Council with which the Legislative Assembly does not agree

No vote shall be taken at the joint sitting

(2) After the joint sitting and either after any further communication with the Legislative Council in order to bring about agreement if possible between the Legislative Council and the Legislative Assembly, or without any such communication, the Legislative Assembly may by resolution direct that the bill as last proposed by the Legislative Assembly and either with or without any amendment subsequently agreed to by the Legislative Council and the Legislative Assembly shall, at any time during the life of the Parliament or at the next general election of members of the Legislative Assembly be submitted by way of referendum to the electors qualified to vote for the election of members of the Legislative Assembly

The referendum shall be held and conducted as may be provided by law and if at any time no such law exists, the law for the time being in force relating to the holding and conduct of a general election of members of the Legislative Assembly shall, *mutatis mutandis*, apply to and in respect of the holding and conduct of the referendum with such modifications, omissions and additions as the Governor may by notification published in the *Gazette* declare to be necessary or convenient for the purposes of such application

(3) If at the referendum a majority of the electors voting approve the bill it shall be presented to the Governor for the signification of His Majesty's pleasure thereon and become an Act of the Legislature upon the royal assent being signified thereto, notwithstanding that the Legislative Council has not consented to the bill

(4) For the purposes of this section the Legislative Council shall be taken to have failed to pass a bill if the bill is not returned to the Legislative Assembly within 2 months after its transmission to the Legislative Council and the session continues during such period.

(5) This section shall extend to any bill whether it is a bill to which section 7A of this Act applies or not.

And in the application of this section to a bill to which section 7A of this Act applies—

(a) the submission of the bill to the electors by way of referendum in accordance with this section shall be a sufficient compliance with the provisions of section 7A of this Act which require the bill to be submitted to the electors ;

(b) the referendum under this section shall, notwithstanding anything contained in section 7A of this Act, be held upon a day which shall be appointed by the Governor in such manner as may be provided by law ; and

(c) the day so appointed shall, notwithstanding anything contained in sub-section (2) of this section, be a day during the life of the Parliament and not sooner than 2 months after the Legislative Assembly has passed a resolution in accordance with that sub-section for the purposes of such referendum.

(6) A joint sitting of the members of the Legislative Council and the members of the Legislative Assembly for the purposes of this section may be convened by the Governor by message to both Houses of the Parliament.

At such joint meeting the President of the Legislative Council or in his absence the Speaker of the Legislative Assembly shall preside, and until standing rules and orders governing the procedure at joint sittings have been passed by both Houses and approved by the Governor, the standing rules and orders of the Legislative Council shall so far as practicable apply.

5c. (1) Where a bill is presented to the Governor for the signification of His Majesty's pleasure in accordance with section 5A of this Act, the words of enactment shall be as follows :—

“ Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of New South Wales in Parliament assembled, in accordance with the provisions of section 5A of “ The Constitution Act, 1902,” as amended by subsequent Acts, and by the authority of the same, as follows ” :—

Any alteration of a bill necessary to give effect to this sub-section shall not be deemed to be an amendment of the bill.

(2) Where a bill is presented to the Governor for the signification of His Majesty's pleasure in accordance with section 5B of this Act, the words of enactment shall be as follows :—

“ Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of New South Wales in Parliament assembled, with the approval of the electors, in accordance with the provisions of section 5B of

"The Constitution Act, 1902," as amended by subsequent Acts, and by the authority of the same, as follows " —

Any alteration of a bill necessary to give effect to this sub section shall not be deemed to be an amendment of the bill

6 The Legislature may by any Act alter the number and extent of the electorates or electoral districts represented in the Legislative Assembly, and establish new electorates or districts, and alter the apportionment of representatives to be chosen by the said electorates or districts, and alter the number of representatives in the said Assembly, and may alter and regulate the appointment of returning officers, and make new provisions for the issuing and return of writs for the election of members to serve in the said Assembly, and the time and place of holding such elections

7 The Legislature may, by any Act, alter the laws in force for the time being under this Act or otherwise concerning the Legislative Council and may provide for the nomination or election of another Legislative Council to consist of such members to be appointed or elected by such persons and in such manner as by any such Act is determined

Provided that every bill passed for any such purpose shall be reserved for the signification of His Majesty's pleasure thereon, and a copy of such bill shall be laid before both Houses of the Imperial Parliament 30 days at least before His Majesty's pleasure thereon is signified

7A (1) The Legislative Council shall not be abolished nor, subject to the provisions of sub-section (6) of this section, shall its constitution or powers be altered except in the manner provided in this section

(2) A bill for any purpose within sub-section (1) of this section shall not be presented to the Governor for His Majesty's assent until the bill has been approved by the electors in accordance with this section

(3) On a day not sooner than 2 months after the passage of the bill through both Houses of the Legislature the bill shall be submitted to the electors qualified to vote for the election of members of the Legislative Assembly

Such day shall be appointed by the Legislature

(4) When the bill is submitted to the electors the vote shall be taken in such manner as the Legislature prescribes

(5) If a majority of the electors voting approve the bill, it shall be presented to the Governor for His Majesty's assent

(6) The provisions of this section shall extend to any bill for the repeal or amendment of this section, but shall not apply to any bill for—

(a) the repeal, or

(b) the amendment from time to time, or

(c) the re-enactment from time to time with or without modifications;

of any of the following sections of this Act, namely, sections 13, 14, 15, 17B, 17C, 18, 19, 20, 21, 22 and 38A, or of any provision for the time being in force so far as it relates to the subject-matter dealt with in any of those sections.

(7) In any case in relation to which the expression "as may be provided by law" is used in "The Constitution Amendment (Legislative Council) Act, 1932," the law may be made as if this section were not in force, and may be so made at any time either before or after the appointed day.

(8) In this section a reference to the Legislative Council shall be construed as a reference to the Legislative Council as reconstituted in accordance with this Act.

8. The Legislature may make laws regulating the sale, letting, disposal and occupation of the waste lands of the Crown in New South Wales.

9. It shall not be lawful for the Legislature to enforce any dues or charges upon shipping contrary to or at variance with any treaty concluded by His Majesty with any foreign Power.

### PART III.—THE LEGISLATIVE COUNCIL AND LEGISLATIVE ASSEMBLY

#### DIVISION 1.—*General Provisions*

10. The Governor may fix the time and place for holding every session of the Legislative Council and Assembly, and may change or vary such time or place as he may judge advisable and most consistent with general convenience and the public welfare, giving sufficient notice thereof. He may also prorogue the Legislative Council and Assembly, and dissolve the said Assembly by proclamation or otherwise whenever he deems it expedient.

11. There shall be a session of the Legislative Council and Assembly once at least in every year, so that a period of 12 months shall not intervene between the last sitting of the Legislative Council and Assembly in one session and the first sitting of the Legislative Council and Assembly in the next session.

12. No member either of the Legislative Council or of the Legislative Assembly shall be permitted to sit or vote therein until he has taken and subscribed before the Governor, or before some person authorised by the Governor to administer the same, the oath of allegiance in the form prescribed by "The Oaths Act, 1900." And whensoever the demise of His present Majesty (whom may God long preserve) or of any of his successors to the Crown of the United Kingdom shall be notified by the Governor to the said Council and

Assembly respectively, the members of the said Council and Assembly shall, before they are permitted to sit and vote therein, take and subscribe the like oath of allegiance to the successor for the time being to the said Crown

Provided that every person authorised by law to make an affirmation instead of taking an oath may make such affirmation in every case in which an oath is hereinbefore required to be taken

In this section the word "demise" shall include abdication

13 (1) Any person who directly, or indirectly, himself, or by any person whatsoever in trust for him or for his use or benefit or on his account, undertakes, executes, holds, or enjoys in the whole or in part any contract or agreement for or on account of the public service shall be incapable of being elected or of sitting or voting as a member of the Legislative Council or Legislative Assembly during the time he executes, holds or enjoys any such contract or any part or share thereof or any benefit or emolument arising from the same

(2) If any person being a member of such Council or Assembly enters into any such contract or agreement, or, having entered into it, continues to hold it, his seat shall be declared by the said Legislative Council or Legislative Assembly, as the case may require, to be vacant, and thereupon the same shall become and be vacant accordingly

(3) Provided that nothing herein contained shall extend to any contract or agreement made, entered into, or accepted by any incorporated company, or any trading company consisting of more than 20 persons, where such contract or agreement is made, entered into, or accepted for, the general benefit of such incorporated or trading company

14 (1) If any person by this Act disabled or declared to be incapable to sit or vote in the Legislative Council or Legislative Assembly is, nevertheless, elected and returned as a member to serve in the said Council or the said Assembly, such election and return shall be declared by the said Council and Assembly, as the case may require, to be void, and thereupon the same shall become and be void to all intents and purposes whatsoever

(2) If any person under any of the disqualifications mentioned in the last preceding section presumes, whilst so disqualified, to sit or vote as a member of the said Council or Assembly, such person shall forfeit the sum of £500 to be recovered by any person who sues for the same in the Supreme Court of New South Wales.

15 (1) The Legislative Council and Legislative Assembly shall, as there may be occasion, prepare and adopt respectively standing rules and orders regulating—

(a) the orderly conduct of such Council and Assembly respectively; and

(b) the manner in which such Council and Assembly shall be

presided over in case of the absence of the President or the Speaker ; and

(c) the mode in which such Council and Assembly shall confer, correspond, and communicate with each other relative to votes or bills passed by, or pending in, such Council and Assembly respectively ; and

(d) the manner in which notices of bills, resolutions and other business intended to be submitted to such Council and Assembly respectively at any session thereof may be published for general information ; and

(e) the proper passing, entitling, and numbering of the bills to be introduced into and passed by the said Council and Assembly ; and

(f) the proper presentation of the same to the Governor for His Majesty's assent.

(2) Such rules and orders shall by such Council and Assembly respectively be laid before the Governor, and being by him approved shall become binding and of force.

## DIVISION 2.—*Special Provisions relating to the Legislative Council*

16-17. [Repealed.]

17A. (1) The Legislative Council shall, on and from a day<sup>(1)</sup> to be appointed by the Governor and notified by proclamation published in the *Gazette*, be reconstituted, and shall consist of 60 elected members.

The day appointed by the Governor in pursuance of this sub-section is in this Act referred to as "the appointed day."

(2) Such members shall be elected at elections at which the electors shall be the members of the Legislative Council and the members of the Legislative Assembly voting as one electoral body and recording their votes at sittings of the respective Houses of the Parliament.

Any vacancy in the seat of a member shall be filled by a like election.

(3) Elections of members of the Legislative Council shall wherever the election is contested, and more than one seat is to be filled, be according to the principle of proportional representation, each voter having one transferable vote, and where only one seat is to be filled be according to a preferential system.

(4) The voting at any such election shall be by secret ballot.

(5) Each voter at any such election shall be required to indicate the order of his preferences for not less than the prescribed number of candidates.

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(1) The day appointed was April 23, 1934.



In this sub-section "the prescribed number" means a number equal to twice the number of seats which are to be filled at the election, and where the number of candidates is less than twice the number of seats to be filled "the prescribed number" means the total number of candidates

(6) *The elections shall be held and conducted and the votes shall be counted and transferred as may be provided by law*

17B (1) Subject to the disqualifications set out in this Act any person whether male or female, married or unmarried—

(a) who is an elector entitled to vote at the election of members of the Legislative Assembly, or a person entitled to become such elector, or a person who on the date upon which His Majesty's assent to "The Constitution Amendment (Legislative Council) Act, 1932," is signified is a member of the Legislative Council, and

(b) who has been for 3 years at the least resident within the limits of the Commonwealth of Australia, and

(c) who is a natural born or naturalised subject of the King, shall be capable of being elected as a member of the Legislative Council and of sitting and voting therein

(2) No person being a member of the Legislative Assembly shall be capable of being elected or of sitting or voting as a member of the Legislative Council

(3) If after being elected as a member of the Legislative Council any person accepts any office of profit under the Crown or any pension from the Crown during pleasure or for a term of years, his election shall thereupon become void, and an election shall be held to fill the vacancy

*Provided that nothing in this sub-section shall extend to—*

(a) any person in receipt only of pay, half-pay, or a pension by virtue of service in any of His Majesty's defence forces or who accepts any office of profit in any of His Majesty's defence forces, or

(b) any person who accepts the office of Vice President of the Executive Council or any of the offices enumerated in the second schedule hereto, or any office of profit under the Crown created by Act of Parliament as an office of the Executive Government

17C (1) A person shall not be a candidate at any election of a member or members of the Legislative Council unless he is nominated for election

(2) Every nomination of a candidate shall be in writing, and shall be made by means of a nomination paper which shall be in or to the effect of such form as may be provided by law

(3) A nomination paper shall contain the name of one candidate and one candidate only

(4) A nomination paper shall be invalid unless the person

nominated therein has consented to the nomination in such manner as may be provided by law.

(5) Each nomination paper shall be signed by two and not more than two electors.

No elector shall sign more than one nomination paper for any election, but the contravention of this provision shall not of itself invalidate any nomination paper.

Each elector signing a nomination paper for any election shall certify thereon that he has not previously signed a nomination paper for that election.

If an elector contravenes this sub-section by signing more than one nomination paper he shall be liable to such penalty as may be provided by law and shall be disqualified from voting and from being a candidate at any election of members of the Legislative Council held within 4 years after the date of the contravention.

In this sub-section "elector" means a person who is for the time being a member of the Legislative Council or a member of the Legislative Assembly.

17D. (1) For the purposes of the election of the 60 members who are to be elected in pursuance of sections 17A, 17B and 17C of this Act for the first constitution of the Legislative Council, there shall be four separate elections at each of which 15 members shall be elected, but nominations shall be made as if the four elections formed one election, and notwithstanding the provisions of sub-section (5) of section 17C of this Act—

(a) each nomination paper shall be signed by two, and not more than two, electors ;

(b) no electors shall sign more than two nomination papers, but the contravention of this provision shall not of itself invalidate any nomination paper ;

(c) each elector signing a nomination paper shall certify thereon that he has not previously signed more than one nomination paper ;

(d) if an elector contravenes this sub-section by signing more than two nomination papers he shall be liable to such penalty as may be provided by law, and shall be disqualified from voting and from being a candidate at any election of members of the Legislative Council held within 4 years after the date of the contravention.

In this sub-section "elector" means a person who is for the time being a member of the Legislative Council or a member of the Legislative Assembly.

(2) At the first of the four elections the candidates shall consist of those persons who are duly nominated for election.

At the second of the four elections the candidates shall consist of those persons who were candidates at the first election and were not declared elected at that election.

At the third of the four elections the candidates shall consist of those persons who were candidates at the second election and were not declared elected at that election

At the fourth of the four elections the candidates shall consist of those persons who were candidates at the third election and were not declared elected at that election

17E (1) If at any election the number of candidates for election does not exceed the number of persons required to be elected all the candidates shall be declared elected

(2) If at any election the number of candidates for election is less than the number of persons required to be elected, a fresh election shall be held to fill the vacancies

17F (1) Subject to the provisions of sub sections (3) and (6) of this section, the term of service of a member of the Legislative Council shall expire at the end of 12 years from its commencement

(2) One-fourth of the members of the Legislative Council shall be elected every 3 years

(3) The term of service of the members elected under section 17D of this Act shall expire as follows —

(a) in the case of the 15 who are elected at the first election under that section—at the end of 12 years from the commencement of such term ,

(b) in the case of the 15 who are elected at the second election under that section—at the end of 9 years from the commencement of such term ,

(c) in the case of the 15 who are elected at the third election under that section—at the end of 6 years from the commencement of such term ,

(d) in the case of the 15 who are elected at the fourth election under that section—at the end of 3 years from the commencement of such term

(4) A member of the Council whose term of service is about to expire shall, if not otherwise disqualified, be capable of being re-elected

(5) An election to fill the seats of members of the Council whose terms of service are about to expire shall be held during the period of 6 months immediately preceding the date of the expiration of such terms of service

(6) Where the seat of a member becomes vacant before the expiration of his term of service the term of service of the person elected to fill such casual vacancy shall expire at the date of the expiration of the term of service of the member whose seat he is elected to fill

(7) For the purposes of this section—

(a) the term of service of a member elected for the first con-

stitution of the Legislative Council shall be taken to commence on the appointed day ;

(b) the term of service of a member elected to fill a seat which becomes vacant by the expiry of the holder's term of service shall be taken to commence on such expiry.

18. Any member of the Legislative Council may resign his seat therein by a letter to the Governor, and, upon the receipt of such letter by the Governor, the seat of such Legislative Councillor shall become vacant.

19. If any Legislative Councillor—

(a) fails for two successive sessions of the Legislature to give his attendance in the Legislative Council unless excused in that behalf by the permission of His Majesty or of the Governor signified by the Governor to the Legislative Council ; or

(b) takes any oath or makes any declaration or acknowledgment of allegiance, obedience, or adherence to any foreign Prince or Power ; or

(c) does, concurs in, or adopts any act whereby he may become a subject or citizen of any foreign State or Power, or whereby he may become entitled to the rights, privileges, or immunities of a subject or citizen of any foreign State or Power ; or

(d) becomes bankrupt, or takes the benefit of any law relating to insolvent debtors ; or

(e) becomes a public contractor or defaulter ; or

(f) is attainted of treason, or convicted of felony, or infamous crime ;

his seat in such Council shall thereby become vacant

20. The law for the time being in force relating to the determination of any dispute or question respecting any election return or qualification of a member of the Legislative Assembly, or respecting any vacancy therein shall, *mutatis mutandis*, and subject to such modifications, amendments, and additions as may be provided by law, apply to the determination of similar disputes or questions respecting the election, return, or qualification of a member of the Legislative Council as reconstituted in pursuance of section 17A of this Act, or respecting any vacancy in the Legislative Council as so reconstituted.

21. (1) The Legislative Council shall, before proceeding to the despatch of any other business, choose one of their number to be President of the Legislative Council, and as often as the office of President becomes vacant the Legislative Council shall again choose one of their number to be the President.

The proceedings of the Legislative Council in choosing the President shall be conducted in such manner as may be provided by law.

The President shall cease to hold office if he ceases to be a member of the Legislative Council. He may be removed from office by a vote of the Legislative Council or he may resign his office by writing under his hand addressed to the Governor.

(2) Before or during the absence of the President the Legislative Council may choose one of their number to perform the duties of the President during his absence.

(3) The President or presiding member may take part in any debate or discussion which may arise in the Legislative Council.

22 (1) The presence of at least one fourth of the members of the Legislative Council exclusive of the President shall be necessary to constitute a quorum for the despatch of business.

Provided that if the whole number of members constituting the Legislative Council is not exactly divisible by four the quorum of the Legislative Council shall consist of such whole number as is next greater than one fourth of the members.

(2) All questions arising in the Legislative Council shall be decided by a majority of the votes of the members present other than the President or the presiding member and when the votes are equal the President or the presiding member shall have a casting vote.

### DIVISION 3—*Special Provisions relating to the Legislative Assembly*

23 The Governor may as occasion requires in the name of His Majesty by instrument under the Great Seal summon and call together a Legislative Assembly.

24 Every such Legislative Assembly shall exist and continue for 3 years from the day of the return of the writs for choosing the same and no longer subject nevertheless to be sooner prorogued or dissolved by the Governor.

25 No person being a member of the Legislative Council shall be capable of being elected or of sitting or voting as a member of the Legislative Assembly.

26 No person—

(a) holding an office of profit under the Crown other than one or more of the offices enumerated in the second schedule hereto or

(b) having a pension from the Crown during pleasure or for any term of years

shall be capable of being elected or of sitting or voting as a member of the Legislative Assembly but the holders for the time being of the offices enumerated in the said schedule shall be so capable.

Provided that the holder of any office of profit under the Crown created by Act of Parliament as an office of the Executive Government shall be capable of being elected and of sitting and voting as a member of the said Assembly.

27. If any member of the said Assembly accepts any office of profit under the Crown, or pension from the Crown, during pleasure or for a term of years, his election shall thereupon become void, and a writ shall forthwith issue for a new election :

Provided that nothing in this or the last preceding section shall extend to—

(a) any person in receipt only of pay, half-pay, or a pension as an officer in His Majesty's navy or army, or who receives any new or other commission in the army or navy, or any increase of pay on such commission ; or

(b) any of the officers enumerated in the second schedule hereto, or referred to in the last preceding section, who accept any other office of the Executive Government referred to in the said section or enumerated in the said schedule ; or

(c) any member of the Legislative Assembly who accepts any of the offices enumerated in the second schedule hereto, or any office of profit under the Crown created by Act of Parliament as an office of the Executive Government.

28. Every member of the Legislative Assembly now serving or hereafter to serve therein shall, unless he is one of the persons specified or referred to in the next following section, be entitled to receive, by way of reimbursement for expenses incurred by him in the discharge of his parliamentary duties, an allowance at the rate of £670 per annum.

The Leader of the Opposition shall be entitled to receive an additional allowance of £176 per annum.

Such allowance shall be charged on the Consolidated Revenue Fund, and shall be payable monthly at the rate aforesaid to every such member from the time of his taking his seat, and, in every case, until he resigns or his seat is vacated, or, where Parliament has been dissolved or has expired by effluxion of time, until the day appointed for taking the poll for the next general election :

Provided that in the case of every member elected after the 1st day of May, 1907, such allowance shall be reckoned from the day of his election.

All moneys accruing due to any member under this Act, not drawn within 7 days after the close of any Parliament, either by dissolution or by effluxion of time, shall revert to the Treasury.

29. (1) No such member shall be entitled to the said allowance, or any portion thereof, whilst—

(a) he holds any office of profit specified in the second schedule hereto ; or

(b) he holds any other office of profit under the Crown the acceptance of which would render vacant the seat of the person accepting the same ; or

(c) he is in receipt of any official salary as Speaker of the said Assembly, or as Chairman of Committees thereof

(2) Any member in receipt of any pension or allowance granted under any Act authorising the grant of superannuation allowances or pensions to officers in the public service shall be entitled to the allowance authorised by the last preceding section, subject to its abatement by the amount he receives or is entitled to as such pension or superannuation allowance

30 Upon any general election the Legislative Assembly shall be competent to proceed to the despatch of business at the time appointed by the Governor for that purpose notwithstanding that any of the writs of election (not exceeding five) have not been returned, or that in any of the electoral districts the electors have failed to elect a member to serve in the said Assembly

31 (1) The members of the Legislative Assembly shall upon the first assembling after every general election proceed forthwith to elect one of their number to be Speaker, and in case of his death, resignation or removal by a vote of the said Legislative Assembly, the said members shall forthwith proceed to elect another of such members to be such Speaker

(2) The Speaker so elected shall preside at all meetings of the said Legislative Assembly except as may be provided by the standing rules and orders hereinafter authorised to be made

31A (1) During the absence from New South Wales of the Speaker, the Chairman of Committees of the Legislative Assembly shall act in his place, and for all purposes, whether of this Act or otherwise, shall have and may exercise and perform all the powers, authorities, duties and functions of the Speaker

(2) Without prejudice to the generality of sub section (1) of this section, the Chairman of Committees of the Legislative Assembly, while acting in the place of the Speaker under that sub section, shall be deemed to be the Speaker for the purposes of section 71 of "The Parliamentary Electorates and Elections Act, 1912-1935"

32 (1) The presence of at least 20 members of the Legislative Assembly, exclusive of the Speaker, shall be necessary to constitute a meeting of the said Assembly for the despatch of business

(2) All questions (except as herein is excepted) which arise in the said Assembly shall be decided by the majority of votes of the members present other than the Speaker, and when the votes are equal the Speaker shall have the casting vote

33 Any member of the Legislative Assembly may, by writing under his hand, addressed to the Speaker, resign his seat therein, and upon the receipt of such resignation by the Speaker the seat of such member shall become vacant

34. If any member of the Legislative Assembly—

(a) fails for one whole session of the Legislature to give his attendance in the said Assembly, unless excused in that behalf by the permission of the Assembly entered upon its journals ; or

(b) takes any oath or makes any declaration or acknowledgment of allegiance, obedience, or adherence to any foreign Prince or Power, or does or concurs in or adopts any act whereby he may become a subject or citizen of any foreign State or Power, or become entitled to the rights, privileges, or immunities of a subject of any foreign State or Power ; or

(c) becomes bankrupt or an insolvent debtor within the meaning of the law in force for the time being relating to bankrupts or insolvent debtors ; or

(d) becomes a public defaulter ; or

(e) is attainted of treason or convicted of felony or any infamous crime ;

his seat in such Assembly shall thereby become vacant.

#### PART IV.—EXECUTIVE COUNCILLORS' FUNCTIONS

35. In this part of this Act—

“ Executive Councillor ” means any member of the Executive Council appointed and sworn in as such member and being also a Minister of the Crown, but does not include the Governor or officer administering the Government of the State.

36. The Governor may authorise any Executive Councillor to exercise the powers and perform the official duties and be responsible for the obligations appertaining or annexed to any other Executive Councillor in respect to the administration of any department of the public service, whether such powers, duties, or obligations were created by virtue of the terms (express or implied) of any Act or are sanctioned by official or other custom :

Provided that no such authority shall be granted under this section in respect of the powers, duties, and obligations by law annexed or incident to the office of the Attorney-General.

37. Every such authority shall be in such terms and subject to such conditions as the Governor thinks fit and shall be duly recorded by the officer in charge of the records of the Executive Council.

38. Subject to the proviso of section 36, any official document, minute, instrument, or paper, of what kind soever, which, according to official custom or to the requirements of any Act, requires or appears to require the signature of any particular Executive Councillor, shall, in the absence or disability of such Executive Councillor, be valid and effectual to all intents and purposes if signed by any other Executive Councillor.



38A (1) Notwithstanding anything contained in this Act, any Executive Councillor who is a member of the Legislative Assembly may at any time, with the consent of the Legislative Council, sit in the Legislative Council for the purpose only of explaining the provisions of any bill relating to or connected with any department administered by him, and may take part in any debate or discussion in the Legislative Council on such bill, but he shall not vote in the Legislative Council

(2) It shall not be lawful at any one time for more than one Executive Councillor under the authority of this section to sit in the Legislative Council

## PART V—THE CONSOLIDATED REVENUE FUND

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## PART VI—APPOINTMENT OF OFFICERS

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### SCHEDULES

#### *First Schedule*

\* \* \*

#### *Second Schedule*

The Premier

The Attorney-General

Nine other Ministers of the Crown being members of the Executive Council

\* \* \*

## 2 Letters Patent, 1900 (as amended 1935).

*Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, Empress of India  
To all to whom these presents shall come, Greeting*

WHEREAS by certain Letters Patent, under the Great Seal of our United Kingdom of Great Britain and Ireland, bearing date at Westminster the 29th day of April, 1879, we did constitute the office of Governor and Commander in Chief in and over our Colony of New South Wales as therein described, and its dependencies And whereas in virtue of the provisions of 'The Commonwealth of Australia Constitution Act, 1900,'<sup>(1)</sup> and of our proclamation issued

thereunder, by and with the advice of our Privy Council, on the 17th day of September, 1900,<sup>(1)</sup> we have by certain Letters Patent under the said Great Seal of our United Kingdom of Great Britain and Ireland, bearing even date herewith,<sup>(2)</sup> made provision for the office of Governor-General and Commander-in-Chief in and over our Commonwealth of Australia: And whereas it has become necessary to make permanent provision for the office of Governor in and over our State of New South Wales and its dependencies, in the Commonwealth of Australia, without making new Letters Patent on each demise of the said office. Now know ye that we do by these presents revoke and determine the said first recited Letters Patent, bearing date the 29th day of April, 1879, and everything therein contained, from and after the proclamation of these our Letters Patent as hereinafter provided: And further know ye that we do by these presents constitute, order, and declare that there shall be a Governor in and over our State of New South Wales and its dependencies in the Commonwealth of Australia (which said State of New South Wales and its dependencies are hereinafter called "the State"), comprising all that portion of our territory of Australia or New Holland lying between the 129th and 154th degrees of east longitude, and northwards of the 40th degree of south latitude, including all the islands adjacent in the Pacific Ocean within the longitudes and latitudes aforesaid, and also including Lord Howe Island, being in or about 31 degrees 30 minutes south, and the 159th degree of east longitude, save and except those parts of our said territory of Australia or New Holland which are called respectively "the State of South Australia," "the State of Victoria," "the State of Queensland," "the Northern Territory of Australia" and "the Territory for the Seat of Government" in the said Commonwealth, and that appointments to the said office shall be made by Commission under our Sign Manual and Signet.

2. We do hereby authorise, empower, and command our said Governor to do and execute . . . . . [continues, *mutatis mutandis*, as in clause 2 of the Letters Patent in respect of New Zealand: see page 128].

3. We do also by these our Letters Patent declare our will and pleasure as follows:—

4. [Identical, *mutatis mutandis*, with clause 3 of the Letters Patent in respect of New Zealand: see page 128.]

5. The Governor shall keep and use the Public Seal of the State for sealing all things whatsoever that shall pass the said Public Seal, and until a Public Seal shall be provided for the State, the Great Seal formerly used for our Colony of New South Wales shall be used as the Public Seal of the State.

(<sup>1</sup>) *State Papers*, Vol. XCIV, page 130.

(<sup>2</sup>) Page 84.

6-8 [Identical, *mutatis mutandis*, with clauses 5-7 of the Letters Patent in respect of New Zealand see page 128]

9 When any crime or offence has been committed within the State against the laws of the State, or for which the offender may be tried therein, the Governor may as he shall see occasion, in our name and on our behalf, grant a pardon to any accomplice in such crime or offence who shall give such information as shall lead to the conviction of the principal offender, or of any one of such offenders if more than one and further, may grant to any offender convicted in any court of the State, or before any judge, or other magistrate of the State, within the State, a pardon, either free or subject to lawful conditions, or any remission of the sentence passed on such offender, or any respite of the execution of such sentence for such period as the Governor thinks fit, and further may remit any fines penalties, or forfeitures due or accrued to us. Provided always that the Governor shall in no case, except where the offence has been of a political nature unaccompanied by any other grave crime, make it a condition of any pardon or remission of sentence that the offender shall absent himself or be removed from the State

10 [Identical *mutatis mutandis*, with clause 9 of the Letters Patent in respect of New Zealand see page 129]

11 The Governor may exercise all powers lawfully belonging to us in respect of the summoning, proroguing, or dissolving any legislative body which now is or hereafter may be established within our said State

12 In the event of the death, incapacity, or removal of the Governor or of his departure or absence from the State, or of his assuming the administration of the Government of our Commonwealth of Australia our Lieutenant Governor, or if there should be no such officer or if such officer be absent from the State, or unable to act, then such person or persons as we may appoint, whether before or after such event, under our Sign Manual and Signet, shall during our pleasure, administer the Government of the State, first taking the oaths hereinbefore directed to be taken by the Governor, and in the manner herein prescribed which being done, we do hereby authorise, empower, and command our Lieutenant Governor, and every other such administrator as afore said to do and execute during our pleasure all things that belong to the office of Governor according to the tenor of these our Letters Patent, and according to our Instructions as aforesaid and the laws of the State

13 Where the Governor has occasion to be absent from the State whether for the purpose of administering the Government of our Commonwealth of Australia or for any other purpose, or to assume such administration without being absent from the State, and such absence or administration is for a period not exceeding one month,

then if our Lieutenant-Governor and every other such administrator as aforesaid be absent from the State or unable to act, or if there be no Lieutenant-Governor or other administrator as aforesaid, the Governor may in every such case, by an instrument under the Public Seal of the State, constitute and appoint any other person to be his deputy during such absence or administration, and in that capacity to exercise, perform, and execute for and on behalf of the Governor during such absence or administration, but no longer, all such powers and authorities vested in the Governor by these our Letters Patent as shall in and by such instrument be specified and limited, but no others.

13A. In the event of the Governor having occasion to be absent from the seat of Government but not from the State for any period not exceeding one month, he may in every such case, by an instrument under the Public Seal of the State, constitute and appoint our Lieutenant-Governor, or if there be no such officer or if such officer be absent from the State or unable to act, then any other such administrator as aforesaid, or if there be no such administrator or if such administrator be absent from the State or unable to act, then any other person, to be his deputy during such absence from the seat of Government, and in that capacity to exercise, perform, and execute for and on behalf of the Governor during such absence from the seat of Government, but no longer, all such powers and authorities vested in the Governor by these our Letters Patent as shall in and by such instrument be specified and limited, but no others.

13B. By the appointment of any deputy as aforesaid the power and authority of the Governor shall not be abridged, altered, or in any way affected otherwise than we may at any time hereafter think proper to direct.

14-15. [Identical, *mutatis mutandis*, with clauses 13-14 of the Letters Patent in respect of New Zealand : see page 13].

16. And we do direct and enjoin that these our Letters Patent shall be read and proclaimed at such place or places within the State as the Governor shall think fit.

In witness whereof we have caused these our Letters to be made Patent. Witness ourself at Westminster, the 29th day of October, in the 64th year of our reign.

By warrant under the Queen's Sign Manual.

MUIR MACKENZIE.

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### 3 Royal Instructions, 1900 (as amended 1909 and 1935)

#### VICTORIA R I

Whereas by certain Letters Patent bearing even date herewith,<sup>(1)</sup> we have constituted, ordered, and declared that there shall be a Governor in and over our State of New South Wales and its dependencies in the Commonwealth of Australia (which said State of New South Wales and its dependencies are therein and hereinafter called "the State")

And whereas we have thereby authorised and commanded the Governor to do and execute all things that belong to his said office, according to the tenor of our said Letters Patent, and of such Commission as may be issued to him under our Sign Manual and Signet, and according to such Instructions as may from time to time be given to him under our Sign Manual and Signet or by our Order in our Privy Council or by us through one of our Principal Secretaries of State, and to such laws as are now or shall hereafter be in force in the State

And whereas we did issue certain Instructions under our Sign Manual and Signet to our Governor and Commander in Chief in and over our Colony of New South Wales and its dependencies, bearing date the 9th day of July, 1892

Now know you that we do hereby revoke the aforesaid Instructions, and we do by these our Instructions under our Sign Manual and Signet direct and enjoin and declare our will and pleasure as follows —

1 [Identical, *mutatis mutandis*, with the same part of the Instructions in respect of Southern Rhodesia see page 366]

2-3 [Identical, *mutatis mutandis*, with the same parts of the Instructions in respect of New Zealand see page 131]

4 The Governor shall attend and preside at the meetings of the Executive Council, unless prevented by some necessary or reasonable cause, and in his absence such member as may be appointed by him in that behalf, or in the absence of such member the senior member of the Executive Council actually present shall preside, the seniority of the members of the said Council being regulated according to the order of their respective appointments as members thereof

5 [Identical, *mutatis mutandis*, with clause 4 of the Instructions in respect of Southern Rhodesia see page 366]

6 [Identical, *mutatis mutandis*, with clause 5 of the Instructions in respect of New Zealand see page 131]

7 [Revoked]

8 The Governor shall not, except in the cases hereunder mentioned, assent in our name to any bill of any of the following classes —

(1) Any bill for the divorce of persons joined together in holy matrimony.

(2) Any bill whereby any grant of land or money, or other donation or gratuity, may be made to himself.

(3) Any bill affecting the currency of the State.

(4) Any bill, the provisions of which shall appear inconsistent with obligations imposed upon us by treaty.

(5) Any bill of an extraordinary nature and importance, whereby our prerogative, or the rights and property of our subjects not residing in the State or the trade and shipping of the United Kingdom and its dependencies may be prejudiced.

(6) Any bill containing provisions to which our assent has been once refused, or which have been disallowed by us ;

Unless he shall have previously obtained our instructions upon such bill through one of our Principal Secretaries of State, or unless such bill shall contain a clause suspending the operation of such bill until the signification in the State of our pleasure thereupon, or unless the Governor shall have satisfied himself that an urgent necessity exists requiring that such bill be brought into immediate operation, in which case he is authorised to assent in our name to such bill, unless the same shall be repugnant to the law of England, or inconsistent with any obligations imposed upon us by treaty. But he is to transmit to us by the earliest opportunity the bill so assented to, together with his reasons for assenting thereto.

9-10. [Identical, *mutatis mutandis*, with clauses 7-8 of the Instructions in respect of New Zealand : see page 132.]

11. The Governor shall not quit the State without having first obtained leave from us for so doing under our Sign Manual and Signet, or through one of our Principal Secretaries of State, except for the purpose of administering the Government of our Commonwealth of Australia or for the purpose of visiting the Governor of any neighbouring State or the Governor-General for periods not exceeding one month at any one time, nor exceeding in the aggregate one month for every year's service in the State.

12. [Revoked.]

## DEPENDENCIES OF AUSTRALIA NORFOLK ISLAND TERRITORY

Norfolk Island, formerly under the control of the Governor of New South Wales, became a Territory of the Commonwealth on the 1st July, 1914, and provision was made for its administration by Commonwealth Act No. 15 of 1913,<sup>(1)</sup> which has been amended by Act No. 14 of 1935<sup>(2)</sup>.

<sup>(1)</sup> *State Papers*, Vol. CXXVI, page 450.

<sup>(2)</sup> *Acts of the Parliament of the Commonwealth of Australia, 1901-1935*, Vol. III, page 2783.

## PAPUA TERRITORY

Under an Act of the Commonwealth of Australia (No 9 of 1905)<sup>(1)</sup> known as "The Papua Act, 1905," which came into operation on the 1st September, 1906, and has been amended by Acts Nos. 32 of 1920<sup>(1)</sup>, 25 of 1924<sup>(1)</sup> and 45 of 1934<sup>(1)</sup>, the possession of British New Guinea was declared a Territory of the Commonwealth and provision was made for its administration by the appointment of a Lieutenant Governor and the establishment of an Executive and a nominated Legislative Council

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## NEW GUINEA MANDATED TERRITORY

The Territory of New Guinea is administered by the Commonwealth of Australia under a mandate dated the 17th December 1920<sup>(2)</sup> Under the Commonwealth "New Guinea Act," No 25 of 1920<sup>(3)</sup>, which was amended in 1926<sup>(4)</sup>, provision is made for the appointment of an Administrator Executive and Legislative Councils were set up by Act No 51 of 1932<sup>(5)</sup>, which was amended by Act No 63 of 1935<sup>(4)</sup>

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## NAURU MANDATED TERRITORY

Nauru is administered under a mandate dated the 17th December 1920<sup>(6)</sup> By an agreement of the 2nd July, 1919,<sup>(7)</sup> between His Majesty's Governments in the United Kingdom, Australia and New Zealand which was confirmed by "The Nauru Island Agreement Act 1920" <sup>(?)</sup> and by the Parliaments of the Commonwealth of Australia and the Dominion of New Zealand it was provided that the administration should be vested in an Administrator, to be appointed in such manner as the three Governments should decide and with power to make ordinances for the peace order and good government of the island A supplementary agreement between the three Governments was signed on May 30 1923<sup>(8)</sup>

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<sup>(1)</sup> *Acts of the Parliament of the Commonwealth of Australia 1901-1935* Vol III page 2804

<sup>(2)</sup> *State Papers* Volume CXIII page 1113 It is similar *mutatis mutandis* to the mandate for Samoa see page 137

<sup>(3)</sup> *Ibid* Vol CXIII page 255

<sup>(4)</sup> *Acts of the Parliament of the Commonwealth of Australia 1901-1935* Vol III page 2775

<sup>(5)</sup> *State Papers* Vol CXXXV page 238

<sup>(6)</sup> *Ibid* Vol CXIII page 1111 It is similar *mutatis mutandis* to the mandate for Samoa see page 137 It contains however no provision respecting the application of laws

<sup>(7)</sup> *Ibid* Vol CXIII page 151

<sup>(8)</sup> *Ibid* Vol CXXXV page 248

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## DOMINION OF NEW ZEALAND

1. Act of the Imperial Parliament to grant a Representative Constitution.—June 30, 1852.

### *Amendments*

#### ACTS OF THE IMPERIAL PARLIAMENT :

August 17, 1857.

June 8, 1863.<sup>(1)</sup>

June 20, 1892.<sup>(2)</sup>

June 9, 1893.<sup>(3)</sup>

August 25, 1894.<sup>(4)</sup>

2. Act of the Dominion Parliament to consolidate certain Enactments relating to Courts and Judicial Matters.—1908.

Text in *Consolidated Statutes of the Dominion of New Zealand* (1908), Vol. III, page 1.

### *Amendments*

#### ACTS OF THE DOMINION PARLIAMENT :

December 24, 1909. . . Text in *Statutes of the Dominion of New Zealand*, 1909, page 148.

February 2, 1913. . . Text in *Statutes of the Dominion of New Zealand*, 1912, page 276.

December 11, 1913. . . Text in *Statutes of the Dominion of New Zealand*, 1913, page 259.

July 30, 1920. . . Text in *Statutes of the Dominion of New Zealand*, 1920, page 7.

August 29, 1923. . . Text in *Statutes of the Dominion of New Zealand*, 1923, page 272.

October 11, 1930. . . Text in *Statutes of the Dominion of New Zealand*, 1930, page 64.

October 25, 1935. . . Text in *Statutes of the Dominion of New Zealand*, 1935, page 69.

August 21, 1936. . . Text in *Statutes of the Dominion of New Zealand*, 1936, page 226.

3. Act of the Dominion Parliament to consolidate certain Enactments relating to the Legislature.—1908.

Text in *Consolidated Statutes of the Dominion of New Zealand* (1908), Vol. III, page 507.

### *Amendments*

#### ACTS OF THE DOMINION PARLIAMENT :

December 11, 1913. . . Text in *Statutes of the Dominion of New Zealand*, 1913, page 244.

November 5, 1914. . . Text in *Statutes of the Dominion of New Zealand*, 1914, pages 252 and 316.

November 11, 1927. . . Text in *Statutes of the Dominion of New Zealand*, 1927, page 361.

(1) 26 Vict., c. 23.

(3) 56 & 57 Vict., c. 14.

(2) 55 & 56 Vict., c. 19.

(4) 57 & 58 Vict., c. 56.



- 4 Act of the Dominion Parliament to define the Powers of the Legislative Council—November 5, 1914 <sup>(1)</sup>

Text in *Statutes of the Dominion of New Zealand*, 1914 page 252  
Amendments

ACTS OF THE DOMINION PARLIAMENT

December 10 1918 Text in *Statutes of the Dominion of New Zealand*, 1918 page 132

October 28 1920 Text in *Statutes of the Dominion of New Zealand* 1920, page 109

- 5 Letters Patent constituting the office of Governor General and Commander in Chief—Westminster, May 11, 1917

Text in *Statutory Rules and Orders*, 1917, page 1141

Amendment

LETTERS PATENT

Westminster December 18 1918 Text in *Statutory Rules and Orders* 1918 Vol II page 1074

- 6 Royal Instructions to the Governor-General and Commander-in Chief—St James's, May 11, 1917

Text in *New Zealand Gazette* April 14 1919

- 7 Act of the Dominion Parliament to consolidate certain Enactments relating to the Representation of the People—November 11, 1927

Text in *Statutes of the Dominion of New Zealand* 1927 page 361  
Amendments

ACTS OF THE DOMINION PARLIAMENT

October 23 1934 Text in *Statutes of the Dominion of New Zealand* 1934 page 139

October 31 1936 Text in *Statutes of the Dominion of New Zealand* 1936 page 634

- 1 Act of Parliament, 1852 (as amended 1857, 1863, 1892, 1893 and 1894)

[15 & 16 Vict, c 72—June 30, 1852]

Preamble and sections 1-31 [Repealed]

32 There shall be within the Colony of New Zealand a General Assembly, to consist of the Governor, a Legislative Council and House of Representatives

33-43 [Repealed]

44 The General Assembly of New Zealand shall be holden at any place and time within New Zealand which the Governor shall from time to time by proclamation for that purpose appoint

45 [Repealed]

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(1) Not yet in operation

46. No member of the said Legislative Council or House of Representatives shall be permitted to sit or vote therein until he shall have taken and subscribed the following oath before the Governor, or before some person or persons authorised by him to administer such oath:

"I, A.B., do sincerely promise and swear, that I will be faithful and bear true allegiance to Her Majesty Queen Victoria. So help me God."

47. Every person authorised by law to make his solemn affirmation or declaration instead of taking an oath may make such affirmation or declaration in lieu of the said oath.

48-52. [Repealed.]

53. It shall be competent to the said General Assembly (except and subject as hereinafter mentioned) to make laws for the peace, order and good government of New Zealand, provided that no such laws be repugnant to the law of England; and the laws so to be made by the said General Assembly shall control and supersede any laws or ordinances in any wise repugnant thereto which may have been made or ordained prior thereto by any Provincial Council; and any law or ordinance made or ordained by any Provincial Council in pursuance of the authority hereby conferred upon it, and on any subject whereon under such authority as aforesaid it is entitled to legislate, shall, so far as the same is repugnant to or inconsistent with any Act passed by the General Assembly, be null and void.

54. It shall not be lawful for the House of Representatives or the Legislative Council to pass, or for the Governor to assent to any bill appropriating to the public service any sum of money from or out of Her Majesty's revenue within New Zealand, unless the Governor on Her Majesty's behalf shall first have recommended to the House of Representatives to make provision for the specific public service towards which such money is to be appropriated, and (save as herein otherwise provided) no part of Her Majesty's revenue within New Zealand shall be issued except in pursuance of warrants under the hand of the Governor directed to the Public Treasurer thereof.

55. It shall and may be lawful for the Governor to transmit by message to either the said Legislative Council or the said House of Representatives for their consideration the drafts of any laws which it may appear to him desirable to introduce, and all such drafts shall be taken into consideration in such convenient manner as shall in and by the rules and orders aforesaid be in that behalf provided.

56. Whenever any bill which has been passed by the said Legislative Council and House of Representatives shall be presented for Her Majesty's assent to the Governor, he shall declare according to his discretion, but subject nevertheless to the provisions contained

in this Act and to such instructions as may from time to time be given in that behalf by Her Majesty that he assents to such bill in Her Majesty's name or that he refuses his assent to such bill or that he reserves such bill for the signification of Her Majesty's pleasure thereon, provided always that it shall and may be lawful for the Governor, before declaring his pleasure in regard to any bill so presented to him to make such amendments in such bill as he thinks needful or expedient and by message to return such bill with such amendments to the Legislative Council or the House of Representatives as he shall think the more fitting and the consideration of such amendments by the said Council and House respectively shall take place in such convenient manner as shall in and by the rules and orders aforesaid be in that behalf provided

57 It shall be lawful for Her Majesty, with the advice of her Privy Council or under Her Majesty's Signet and Sign Manual or through one of her Principal Secretaries of State from time to time to convey to the Governor of New Zealand such Instructions as to Her Majesty shall seem meet for the guidance of such Governor for the exercise of the powers hereby vested in him of assenting to or dissenting from or for reserving for the signification of Her Majesty's pleasure bills to be passed by the said Legislative Council and House of Representatives, and it shall be the duty of such Governor to act in obedience to such Instructions

58 Whenever any bill which shall have been presented for Her Majesty's assent to the Governor shall by such Governor have been assented to in Her Majesty's name he shall by the first convenient opportunity transmit to one of Her Majesty's Principal Secretaries of State an authentic copy of such bill so assented to, and it shall be lawful at any time within 2 years after such bill shall have been received by the Secretary of State for Her Majesty by Order in Council to declare her disallowance of such bill, and such disallowance together with a certificate under the hand and seal of the Secretary of State certifying the day on which such bill was received as aforesaid being signified by the Governor to the said Legislative Council and House of Representatives by speech or message or by proclamation in the *Government Gazette* shall make void and annul the same from and after the day of such signification

59 No bill which shall be reserved for the signification of Her Majesty's pleasure thereon shall have any force or authority within New Zealand until the Governor shall signify, either by speech or message to the said Legislative Council and House of Representatives or by proclamation that such bill has been laid before Her Majesty in Council and that Her Majesty has been pleased to assent to the same, and an entry shall be made in the journals of the said Legislative Council and House of Representatives of every such speech message or proclamation, and a duplicate thereof duly attested

shall be delivered to the Registrar of the Supreme Court, or other proper officer, to be kept among the records of New Zealand; and no bill which shall be so reserved as aforesaid shall have any force or authority within New Zealand, unless Her Majesty's assent thereto shall have been so signified as aforesaid within the space of 2 years from the day on which such bill shall have been presented for Her Majesty's assent to the Governor as aforesaid.

60. [Repealed.]

61. It shall not be lawful for the said General Assembly to levy any duty upon articles imported for the supply of Her Majesty's land or sea forces, or to levy any duty, impose any prohibition or restriction, or grant any exemptions, bounty, drawback or other privilege upon the importation or exportation of any articles, or to impose any dues or charges upon shipping contrary to or at variance with any treaty or treaties concluded by Her Majesty with any foreign Power.

62-63. [Repealed.]

64. There shall be payable to Her Majesty, every year, out of the revenue arising from such taxes, duties, rates and imposts, and from the disposal of such waste lands of the Crown in New Zealand, the several sums mentioned in the schedule to this Act: such several sums to be paid for defraying the expenses of the services and purposes mentioned in such schedule, and to be issued by the Treasurer of New Zealand in discharge of such warrants as shall be from time to time directed to him under the hand and Seal of the Governor.

65. It shall be lawful for the General Assembly of New Zealand, by any Act or Acts, to alter all or any of the sums mentioned in the said schedule, and the appropriation of such sums to the services and purposes therein mentioned: but every bill which shall be passed by the said Legislative Council and House of Representatives altering the salary of the Governor, or altering the sum described as for native purposes, shall be reserved for the signification of Her Majesty's pleasure thereon, and until and subject to such alteration by Act or Acts as aforesaid the salaries of the Governor and judges shall be those respectively set against their several offices in the said schedule: and accounts in detail of the expenditure of the several sums for the time being appropriated under this Act, or such Act or Acts as aforesaid of the said General Assembly, to the several services and purposes mentioned in the said schedule, shall be laid before the said Legislative Council and House of Representatives within 30 days next after the beginning of the session after such expenditure shall have been made: Provided always, that it shall not be lawful for the said General Assembly, by any such Act as aforesaid, to make any diminution in the salary of any judge to take effect during the continuance in office of any person being such judge at the time of the passing of such Act.

66 After and subject to the payments to be made under the provisions hereinbefore contained, all the revenue arising from taxes, duties, rates and imposts levied in virtue of any Act of the General Assembly shall be subject to be appropriated to such specific purposes as by any Act of the said General Assembly shall be prescribed in that behalf

67-70 [Repealed]

71 And whereas it may be expedient that the laws, customs and usages of the aboriginal or native inhabitants of New Zealand, so far as they are not repugnant to the general principles of humanity, should for the present be maintained for the government of themselves, in all their relations to and dealings with each other, and that particular districts should be set apart within which such laws, customs or usages should be so observed \*

It shall be lawful for Her Majesty, by any Letters Patent to be issued under the Great Seal of the United Kingdom, from time to time to make provision for the purposes aforesaid, any repugnancy of any such native laws, customs or usages to the law of England, or to any law statute or usage in force in New Zealand or in any part thereof, in any wise notwithstanding

72 Subject to the provisions herein contained, it shall be lawful for the said General Assembly to make laws for regulating the sale, letting, disposal and occupation of the waste lands of the Crown in New Zealand, and all lands wherein the title of natives shall be extinguished as hereinafter mentioned, and all such other lands as are described in an Act of the session holden in the 10th and 11th years of Her Majesty, chapter 112, to promote colonisation in New Zealand, and to authorise a loan to the New Zealand Company, as demesne lands of the Crown shall be deemed and taken to be waste lands of the Crown within the meaning of this Act

73-79 [Repealed]

80 In the construction of this Act the term "Governor" shall mean the person for the time being lawfully administering the Government of New Zealand <sup>(1)</sup>

81 [Repealed]

82 The proclamation of this Act, and all proclamations to be made under the provisions thereof, shall be published in the *New Zealand Government Gazette*

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<sup>(1)</sup> The remainder of this section was repealed by 'The New Zealand (Boundaries) Act, 1863 of the Imperial Parliament (26 Vict, c 23) section 2 of which provides 'The Colony of New Zealand shall for the purposes of this Act and for all other purposes whatever be deemed to comprise all territories islands and countries lying between the 162nd degree of east longitude and the 173rd degree of west longitude and between the 33rd and 53rd parallels of south latitude'

## 1(a). Act of Parliament, 1857.

[20 &amp; 21 Vict., c. 53.—August 17, 1857.]

\* \* \*

2. It shall be lawful for the said General Assembly of New Zealand by any Act or Acts from time to time to alter, suspend, or repeal all or any of the provisions of the said Act,<sup>(1)</sup> except such as are hereinafter specified; namely,

So much of the said Act as repeals former Acts, Letters Patent, Instructions and Orders in Council:

The provisions contained in sections 3, 18 (save the exception therein contained), 25, 28, 29, 32, 34, 46, 47, 53, 54, 56, 57, 58, 59, 61, 64 (save so much as charges the Civil List on the revenues arising from the disposal of waste lands of the Crown), 65, 71, 73 and 80 of the said Act:

But no such Act of the General Assembly as aforesaid which shall alter, suspend, or repeal any of the provisions contained in section 19 of the said Act shall have any force or effect unless the same shall have been reserved for the signification of Her Majesty's pleasure thereon, and until the Governor of New Zealand shall have signified, as provided by the said Act, that Her Majesty has been pleased to assent to the same.

\* \* \*

## 3. Legislature Act, 1908 (as amended 1913, 1914 and 1927).

\* \* \*

## DIVISION I.—THE LEGISLATIVE COUNCIL

2. (1) The Governor may from time to time, in His Majesty's name, by instrument under the Public Seal of New Zealand, summon to the Legislative Council of New Zealand (hereinafter called "the Council") such male persons as he thinks fit, and every person so summoned shall thereby become a member thereof:

Provided that no person shall be so summoned or shall be capable of holding a seat in or of sitting or voting as a member of the Council—

(a) Who is not of the full age of 21 years, and either a natural-born subject of His Majesty, or a subject of His Majesty naturalised by or under any Act of the Imperial Parliament or by or under an Act of the General Assembly of New Zealand; or

(b) Who at any time theretofore has been bankrupt and has

not received his discharge, or who has been attainted or convicted of any treason, any crime formerly known as felony, or any infamous offence within any part of His Majesty's dominions, or as a public defaulter in New Zealand unless he has received a free pardon or has undergone the sentence or punishment to which he was adjudged in respect thereof, or

(c) Who is a member of Parliament, or

(d) Who is a contractor, or

(e) Who is, or within the next preceding 6 months was, a civil servant

(2) Every member of the Council who offends against the foregoing provisions of this section relating to members of Parliament, contractors or civil servants shall cease to be a member of the Council and if he offends knowingly and wilfully he shall be liable to a fine not exceeding £50 for every day he sits or votes in the Council

\* \* \*

11 (1) No Maori who is summoned to the Legislative Council shall be capable of being appointed to any office of emolument under the Government so long as he is a member of the Council

(2) If any such member at the time of his being so summoned holds any office of emolument as aforesaid the salary or emolument of such office shall neither be increased nor diminished during the time he remains a member of the Council

(3) This section does not apply to the holding a seat in the Executive Council or holding an appointment as adviser or assessor of or in connection with the Executive Council and receiving salary only in respect of such seat or such appointment, such seat or appointment being held on the ordinary tenure of responsible government

\* \* \*

#### 4 Legislative Council Act, 1914 (as amended 1918 and 1920) <sup>(1)</sup>

[5 Geo V, No 59—November 5 1914]

\* \* \*

#### PART I—*Powers of the Council and House respectively*

5 Proposed laws appropriating revenue or moneys or imposing taxation shall not originate in the Council. But a proposed law shall not be taken to appropriate revenue or moneys or to impose

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(1) Not yet in operation

taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand or payment or appropriation of fees for licences, or fees for services under the proposed law. The Council may not amend proposed laws imposing taxation or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government. The Council may not amend any proposed law so as to increase any proposed charge or burden on the people. The Council may at any stage return to the House any proposed law which the Council may not amend, requesting, by message, the omission or amendment of any items or provisions therein; and the House may, if it thinks fit, make any such omission or amendment, with or without modifications.

6. (1) If a money bill, having been passed by the House, and sent up to the Council at least one month before the end of the session, is not passed by the Council without amendment within one month after it is so sent up to the Council, the bill shall, unless the House directs to the contrary, be presented to the Governor and become an Act of Parliament on the Governor's assent being signified, notwithstanding that the Council has not consented to the bill.

(2) A money bill means a public bill which, in the opinion of the Speaker of the House, contains only provisions dealing with all or any of the following subjects—namely, the imposition, repeal, remission, alteration, or regulation of taxation; the imposition for the payment of debt or other financial purposes of charges on the Consolidated Fund, or on money provided by Parliament, or the variation or repeal of any such charges; supply; the appropriation, receipt, custody, issue or audit of accounts of public money; the raising or guarantee of any loan or the repayment thereof; or subordinate matters incidental to those subjects or any of them.

(3) There shall be endorsed on every money bill when it is sent up to the Council, and when it is presented to the Governor for assent, the certificate of the Speaker of the House, signed by him, that it is a money bill.

(4) Any certificate of the Speaker of the House given under this section shall be conclusive for all purposes, and shall not be questioned in any court of law.

(5) In every bill presented to the Governor under the preceding provisions of this section the words of enactment shall be as follows, that is to say:—

“Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the House of Representatives of New Zealand in this present Parliament assembled, in accordance with the provisions of “The Legislative Council Act, 1914,” and by the authority of the same, as follows.”



(6) Any alteration of a bill necessary to give effect to the last preceding sub-section shall not be deemed to be an amendment of the bill

7 (1) If the House passes any public bill, other than a money bill which is sent up to the Council at least one month before the end of the session and the Council rejects or fails to pass it, or passes it with amendments to which the House will not agree, and if the House in the next session again passes the bill, with or without any amendments which have been made or agreed to by the Council, and the Council rejects or fails to pass it within one month after it is sent up to the Council, or passes it with amendments to which the House will not agree, the Governor may during that session convene a joint sitting of the members of the two Houses of Parliament

(2) The members present at such joint sitting may deliberate and shall vote together upon the bill as last proposed by the House

(3) If the bill as last proposed by the House is affirmed by the vote of a majority of the total number of members of both Houses of Parliament present at such joint sitting at the time when such vote is taken, it shall be deemed to have been duly passed by both Houses of Parliament

(4) If the bill as last proposed by the House is not affirmed by the vote of a majority of the total number of members of both Houses of Parliament present at such joint sitting at the time when such vote is taken, the Governor may, if he thinks fit, dissolve both the Council and the House simultaneously

Provided that the Governor shall not so dissolve the Council and the House simultaneously within the last 6 months of the period of 3 years referred to in sub-section (2) of section 13 of the principal Act<sup>(1)</sup>

8 In this Part of this Act the expressions "revenue," "moneys," "taxation," "public money," and "loan" respectively do not include the revenues or moneys of, or taxation to be levied by, or loans to be raised by, a local authority

9 Except as provided in this part of this Act, the Council shall have equal power with the House in respect of all proposed laws

## PART II — *Constitution of the Council, and Electoral Divisions*

10 (1) Subject to the provisions of this Act, members of the Council shall after the commencement of this Act be elected and not appointed

(2) The members of the Council so to be elected shall be elected in every electoral division hereinafter mentioned by the votes of those of the inhabitants of New Zealand who are entitled to vote at an election of a member of the House of Representatives in any electoral district within the electoral division

11. Except as provided by this section, every elected member of the Council (other than a member elected by the Council to fill a vacancy as provided by section 20 hereof) shall continue to hold his seat until the dissolution or expiry of the Parliament which takes place next after the expiration of 5 years from the date of his election, and no longer :

Provided that if the Governor under the powers conferred on him by section 7 hereof dissolves both the Council and the House simultaneously the seat of every elected member of the Council shall be vacated by and at the date of the proclamation of such dissolution.

12. The first election of members to the Council shall take place simultaneously with the first election of members of the House held after the commencement of this Act, and, except as provided by this section, the next and every succeeding election of members of the Council shall take place simultaneously with the election of members of the House held next after the expiration of 5 years from the last preceding election of members of the Council :

Provided that if the Governor under the powers conferred on him by section 7 hereof dissolves both the Council and the House simultaneously an election of members of the Council shall be held simultaneously with the election of members of the House held consequent upon such dissolution.

13. (1) For the purpose of the election of members of the Council as aforesaid, New Zealand is hereby divided into four electoral divisions, to be known respectively as "The First Electoral Division," "the Second Electoral Division," "the Third Electoral Division" and "the Fourth Electoral Division."

(2) The said electoral divisions shall, until altered by the Representation Commissions as provided by this Act, be such as shall be defined by Order in Council published in the *Gazette*.

(3) Such definition of the electoral divisions shall be determined in accordance with the rules specified in section 16 hereof, the words "the Governor-General in Council" being for this purpose substituted for the words "the Commissions."

14. (1) At the first election of members of the Council pursuant to this Act there shall be elected 7 members for the First Electoral Division, 7 for the Second Electoral Division, 5 for the Third Electoral Division and 5 for the Fourth Electoral Division.

(2) At every election after the first election there shall be elected 40 members from the four electoral divisions in the numbers ascertained in the manner hereinafter provided. Until the Representation Commissions alter the boundaries of the electoral divisions the numbers to be elected at the second and subsequent elections shall be 11 from each of the First and Second Electoral Divisions, and 9 from each of the Third and Fourth Electoral Divisions.

15 Whenever after the commencement of this Act the Representation Commissions divide New Zealand into electoral districts as provided by section 22 of the principal Act—

(a) The number of the European population in each island being ascertained by the last preceding census, the number 40 shall be divided into such two even numbers as most nearly represent the proportion which the number of the population in one island bears to the number of the population in the other island

(b) The Governor shall cause such division of the number 40 to be made in such manner as he thinks fit, and shall cause notice of the result to be gazetted

(c) The total number of members to be elected to the Council for both islands being 40, the total number to be elected from each island shall be ascertained by the notice so gazetted

16 The Representation Commissions for each island, sitting together as a Joint Commission, shall, immediately after the gazetting of the proclamations determining the boundaries of the electoral districts, proceed to determine the boundaries of the electoral divisions in each island, and the number of members to be elected by each electoral division, according to the following rules —

(a) There shall be in each island two electoral divisions

(b) The boundary between the First and Second and between the Third and Fourth Electoral Divisions respectively shall be one continuous line from sea to sea, consisting of the boundary or boundaries of one or more electoral districts, so that every electoral district shall be entirely within an electoral division

(c) The First Electoral Division shall be the northern part of the North Island, the Second Electoral Division shall be the southern part of the North Island, the Third Electoral Division shall be the northern part of the South Island, and the Fourth Electoral Division shall be the southern part of the South Island

(d) The boundaries shall be such as in the opinion of the Commissions provide with the nearest approximation that the population of the First Electoral Division shall be the same as the population of the Second Electoral Division, and that the population of the Third Electoral Division shall be the same as the population of the Fourth Electoral Division

17 The Representation Commissions as a Joint Commission shall report to the Governor the boundaries of the electoral divisions fixed by them, and also the number of members ascertained and determined by them to be elected by each electoral division, and the Governor shall cause such report to be published in the *Gazette*, and such report shall have the force of law as from the date of such publication for the purposes of the election of members of the Council to be held next after such date

18. (1) Any person who under the provisions of the principal Act may be elected a member of the House, but no other, may be elected a member of the Council, except that a member of the House shall not be elected a member of the Council.

(2) When and so soon as women are eligible for election as members of the House they shall also be eligible for nomination and election as members of the Council, and also to be chosen members under section 20 hereof.

(3) If any person is elected both for the Council and the House, or is elected a member of either House of Parliament while he is a member of the other, his seat in each such House of Parliament shall be vacated.

19. If at any election under this Act the number of candidates for any electoral division does not equal the number to be elected for that division, the Council shall, within 21 days from the day when it is next in session after such election, choose by ballot of all the members of the Council then present such number of persons qualified to be elected members of the Council as provided by section 18 hereof as will, with the candidates elected, make up the number required, and such persons so chosen by the Council shall be and continue members of the Council for the same period as the candidates who were declared elected at such election after nomination.

20. If the seat of any elected member of the Council becomes vacant during the term for which such member was elected, the Council shall, within 21 days from the day when it is next in session after the occurrence of such vacancy, choose by ballot of all the members of the Council then present a person, not being a member of either House of Parliament, to fill such vacancy. A member so chosen shall retain his seat for as long as the member whose seat became vacant would have retained it if such vacancy had not occurred.

21. (1) The Governor may from time to time, in His Majesty's name, by instrument under the Public Seal of New Zealand, summon to the Council male persons of the Maori race, not being persons disqualified pursuant to section 2 of the principal Act from holding seats in or of sitting or voting as members of the Council. The number of members holding office pursuant to this section shall not at any time exceed 3.

(2) Notwithstanding anything in section 3 of the principal Act, every person appointed a member of the Council under this section shall hold his seat therein for 6 years, to be reckoned from the date of the instrument of his appointment, and no longer; but every such person may from time to time be reappointed.

22. (1) Every member of the Council who at the commencement of this Act holds an appointment for life shall continue to be a member of the Council, notwithstanding the passing of this Act,

so long as he is qualified pursuant to the provisions of the principal Act

(2) Every member of the Council who at the commencement of this Act holds an appointment for a term of years shall continue to be a member of the Council until the expiration of the term for which he was so appointed, notwithstanding the passing of this Act, so long as he is qualified pursuant to the provisions of the principal Act

\* \* \*

## 5. Letters Patent, 1917 (as amended 1918).

*George V by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British dominions beyond the Seas King Defender of the Faith, Emperor of India To all to whom these presents shall come Greeting*

*Whereas by an Act passed in the Session holden in the 26th and 27th years of the reign of Her Majesty Queen Victoria, entitled "An Act to alter the Boundaries of New Zealand,"<sup>(1)</sup> the Colony of New Zealand was defined as comprising all territories, islands and countries lying between the 162nd degree of east longitude and the 173rd degree of west longitude and between the 33rd and 53rd parallels of south latitude*

*And whereas by a proclamation bearing date the 21st day of July, 1887 issued by the Governor of New Zealand under authority of Letters Patent passed under the Great Seal of our United Kingdom bearing date the 18th day of January, 1887,<sup>(2)</sup> the islands situate in the South Pacific Ocean between the parallels of 29 degrees and 32 degrees south latitude and the meridians of 177 degrees and 180 degrees west longitude, known as 'the Kermadec Group,' were, from and after the 1st day of August, 1887, annexed to and became part of the Colony of New Zealand*

*And whereas by a proclamation bearing date the 10th day of June, 1901,<sup>(3)</sup> issued by the Governor of New Zealand by authority of an Order by His late Majesty King Edward VII in his Privy Council dated the 13th day of May, 1901<sup>(4)</sup> made in virtue and by exercise of the*

<sup>(1)</sup> 26 Vict., c. 23

<sup>(3)</sup> *Ibid*, Vol XCIV, page 1306

<sup>(2)</sup> *State Papers* Vol. LXXVIII, page 1018

<sup>(4)</sup> *Ibid*, Vol XCIV, page 1300

powers vested in him by "The Colonial Boundaries Act, 1895,"<sup>(1)</sup> the boundaries of the Colony of New Zealand were on and after the 11th day of June, 1901, extended so as to include the islands of the Cook Group, and all other the islands and territories which were then or might thereafter form part of our dominions situate within the following boundary line, viz.:—A line commencing at a point at the intersection of the 23rd degree of south latitude and the 156th degree of longitude west of Greenwich, and proceeding due north to the point of intersection of the 8th degree of south latitude and the 156th degree of longitude west of Greenwich, thence due west to the point of intersection of the 8th degree of south latitude and the 167th degree of longitude west of Greenwich, thence due south to the point of intersection of the 17th degree of south latitude and the 167th degree of longitude west of Greenwich, thence due west to the point of intersection of the 17th degree of south latitude and the 170th degree of longitude west of Greenwich, thence due south to the point of intersection of the 23rd degree of south latitude and the 170th degree of longitude west of Greenwich, and thence due east to the point of intersection of the 23rd degree of south latitude and the 156th degree of longitude west of Greenwich :

And whereas by royal proclamation, bearing date the 9th day of September, 1907,<sup>(2)</sup> His said Majesty did ordain, declare, and command that on and after the 26th day of September, 1907, the Colony of New Zealand and the territory belonging thereto should be called and known by the title of "the Dominion of New Zealand" :

And whereas by certain Letters Patent, under the Great Seal of our United Kingdom of Great Britain and Ireland, bearing date at Westminster the 18th day of November, 1907,<sup>(2)</sup> His said Majesty did constitute, order, and declare that there should be a Governor and Commander-in-Chief in and over the Dominion of New Zealand (therein called "the Dominion") and that appointments to the said office when vacant should be made by Commission under the Royal Sign Manual and Signet :

And whereas it has been represented to us that it is expedient that the designation of the officer administering the Government of our Dominion of New Zealand should be changed from "Governor and Commander-in-Chief" to "Governor-General and Commander-in-Chief" and it has accordingly become necessary to make provision for the office of Governor-General and Commander-in-Chief in and over our Dominion of New Zealand :

1. Now therefore we do by these presents revoke and determine the above-recited Letters Patent of the 18th day of November, 1907, but without prejudice to anything lawfully done thereunder. And we do by these presents constitute, order, and declare that there shall be a Governor-General and Commander-in-Chief in and over our Dominion of New Zealand (hereinafter called "the Dominion"),

(1) *State Papers*, Vol. LXXXVII, page 967.

(2) *Ibid.*, Vol. C, page 27.

comprising the territories, islands and countries forming the Colony of New Zealand as defined in the above recited Act, passed in the session holden in the 26th and 27th years of the reign of Her Majesty Queen Victoria, entitled "An Act to alter the Boundaries of New Zealand," together with the further islands and territories included within the boundaries of the Colony of New Zealand by the above recited proclamations of the Governor thereof, dated respectively the 21st day of July, 1887, and the 10th day of June, 1901, and that appointments to the said office when vacant shall be made by Commission under our Sign Manual and Signet

2 We do hereby authorise, empower, and command our said Governor General and Commander-in-Chief (hereinafter called "the Governor-General") to do and execute all things that belong to his said office according to the tenor of these our Letters Patent and of such Commission as may be issued to him under our Sign Manual and Signet and according to such Instructions as may from time to time be given to him under our Sign Manual and Signet, or by our Order in our Privy Council, or by us, through one of our Principal Secretaries of State, and to such laws as are now or shall hereafter be in force in the Dominion

3 Every person appointed to fill the office of Governor General shall with all due solemnity, before entering on any of the duties of his office, cause the Commission appointing him to be Governor General to be read and published at the seat of Government, in the presence of the Chief Justice or some other judge of the Supreme Court of the Dominion and of the members of the Executive Council thereof which being done, he shall then and there take before them the oath of allegiance, in the form provided by an Act passed in the session holden in the 31st and 32nd years of the reign of Her Majesty Queen Victoria intituled "An Act to amend the Law relating to Promissory Oaths,"<sup>(1)</sup> and likewise the usual oath for the due execution of the office of Governor General and for the due and impartial administration of justice, which oaths the said Chief Justice or judge is hereby required to administer.

4 The Governor General shall keep and use the Public Seal of the Dominion for sealing all things whatsoever that shall pass the said Public Seal

5 There shall be an Executive Council for the Dominion, and the said Council shall consist of such persons as were immediately before the coming into force of these our Letters Patent members of the Executive Council of New Zealand, or as may at any time be members of the Executive Council of the Dominion in accordance with any law enacted by the Legislature of the Dominion, and of such other persons as the Governor General shall, from time to time, in our name and on our behalf, but subject to any law as aforesaid, appoint under the Public Seal of the Dominion to be members of the Executive Council of the Dominion

6. The Governor-General, in our name and on our behalf, may make and execute, under the said Public Seal, grants and dispositions of any lands which may be lawfully granted and disposed of by us within the Dominion.

7. The Governor-General may constitute and appoint, in our name and on our behalf, all such judges, commissioners, justices of the peace and other necessary officers and Ministers of the Dominion as may be lawfully constituted or appointed by us.

8. When any crime has been committed within the Dominion or for which the offender may be tried therein, the Governor-General may as he shall see occasion, in our name and on our behalf, grant a pardon to any accomplice in such crime who shall give such information as shall lead to the conviction of the principal offender, or of any one of such offenders if more than one; and further, may grant to any offender convicted in any court, or before any judge, or other magistrate, within the Dominion, a pardon, either free or subject to lawful conditions, or any remission of the sentence passed on such offender, or any respite of the execution of such sentence for such period as the Governor-General thinks fit; and further may remit any fines, penalties, or forfeitures due or accrued to us. Provided always that the Governor-General shall in no case, except where the offence has been of a political nature unaccompanied by any other grave crime, make it a condition of any pardon or remission of sentence that the offender shall absent himself or be removed from the Dominion.

9. The Governor-General may, so far as we ourselves lawfully may, upon sufficient cause to him appearing, remove from his office, or suspend from the exercise of the same, any person exercising any office or place within the Dominion under or by virtue of any commission or warrant granted, or which may be granted, by us, in our name, or under our authority.

10. The Governor-General may exercise all powers lawfully belonging to us in respect of the summoning, proroguing, or dissolving any legislative body, which now is or hereafter may be established within the Dominion, and in respect of the appointment of members thereto.

11. In the event of the death, incapacity, or removal of the Governor-General, or of his departure from the Dominion, our Lieutenant-Governor, or, if there be no such officer in the Dominion, then such person or persons as we may appoint under our Sign Manual and Signet, shall, during our pleasure, administer the Government of the Dominion, first taking the oaths hereinbefore directed to be taken by the Governor-General, and in the manner herein prescribed; which being done, we do hereby authorise, empower, and command our Lieutenant-Governor, and every other such administrator as aforesaid, to do and execute during our pleasure all things that belong to the office of Governor-General and



Commander-in-Chief according to the tenor of these our Letters Patent, and according to our Instructions as aforesaid, and the laws of the Dominion

12 In the event of the Governor-General having occasion to be temporarily absent for a short period from the seat of Government or from the Dominion, he may in every such case, by an instrument under the Public Seal of the Dominion, constitute and appoint our Lieutenant-Governor, or if there be no such officer, then any other person to be his deputy during such temporary absence, and in that capacity to exercise, perform, and execute for and on behalf of the Governor-General during such absence, but no longer, all such powers and authorities vested in the Governor General by these our Letters Patent, as shall in and by such instrument be specified and limited but no others. Provided, nevertheless, that, by the appointment of a deputy as aforesaid, the power and authority of the Governor-General shall not be abridged, altered, or in any way affected otherwise than we may at any time hereafter think proper to direct

13 And we do hereby require and command all our officers and Ministers, civil and military, and all other the inhabitants of the Dominion to be obedient, aiding, and assisting unto the Governor-General, or such person or persons as may from time to time, under the provisions of these our Letters Patent, administer the Government of the Dominion

14 And we do hereby reserve to ourselves, our heirs and successors full power and authority from time to time to revoke, alter, or amend these our Letters Patent as to us or them shall seem meet

15 And we do direct and enjoin that these our Letters Patent shall be published within our Dominion at such time and in such manner as the officer administering the Government thereof shall think fit. They shall commence and come into operation as from the 28th day of June, 1917, and that date shall be and be deemed for all purposes to be the date of their commencement

In witness whereof we have caused these our Letters to be made Patent. Witness ourself at Westminster, the 11th day of May in the 8th year of our reign

By warrant under the King's Sign Manual

SCHUSTER

## 6 Royal Instructions, 1917.

*Whereas by certain Letters Patent<sup>(1)</sup> bearing even date herewith we have constituted, ordered, and declared that there shall be a Governor-General and Commander in Chief (therein and hereinafter called "the Governor General") in and over our Dominion of New Zealand (therein and hereinafter called "the Dominion")*

*And whereas we have thereby authorised and commanded the Governor-General to do and execute all things that belong to his said office, according to the tenor of our said Letters Patent, and of such Commission as may be issued to him under our Sign Manual and Signet, and according to such Instructions as may from time to time be given to him under our Sign Manual and Signet or by our Order in our Privy Council or by us through one of our Principal Secretaries of State, and to such laws as are now or shall hereafter be in force in the Dominion :*

*Now know you that we do by these our Instructions under our Sign Manual and Signet direct and enjoin and declare our will and pleasure as follows :—*

1. In these our Instructions, unless inconsistent with the context, the term "the Governor-General" shall include every person for the time being administering the Government of the Dominion, and the term "the Executive Council" shall mean the members of the Executive Council for the Dominion who are for the time being the responsible advisers of the Governor-General.

2. The Governor-General may, whenever he thinks fit, require any person in the public service to take the oath of allegiance, together with such other oath or oaths as may from time to time be prescribed by any law in force in the Dominion. The Governor-General is to administer such oaths or cause them to be administered by some public officer of the Dominion.

3. The Governor-General shall forthwith communicate these our Instructions to the Executive Council, and likewise all such others, from time to time, as he shall find convenient for our service to impart to them.

4. The Executive Council shall not proceed to the despatch of business unless two members at the least (exclusive of the Governor-General or of the member presiding) be present and assisting throughout the whole of the meetings at which any such business shall be despatched.

5. In the execution of the powers and authorities vested in him, the Governor-General shall be guided by the advice of the Executive Council, but if in any case he shall see sufficient cause to dissent from the opinion of the said Council, he may act in the exercise of his said powers and authorities in opposition to the opinion of the Council, reporting the matter to us without delay, with the reasons for his so acting.

In any such case it shall be competent to any member of the said Council to require that there be recorded upon the minutes of the Council the grounds of any advice or opinion that he may give upon the question.

6. The Governor-General is to take care that all laws assented to by him in our name, or reserved for the signification of our pleasure

thereon, shall, when transmitted by him, be fairly abstracted in the margins, and be accompanied, in such cases as may seem to him necessary, with such explanatory observations as may be required to exhibit the reasons and occasions for proposing such laws, and he shall also transmit fair copies of the journals and minutes of the proceedings of the Parliament of the Dominion which he is to require from the clerks, or other proper officers in that behalf, of the said Parliament

7 The Governor-General shall not pardon or reprieve any offender without first receiving in capital cases the advice of the Executive Council, and in other cases the advice of one, at least, of his Ministers and in any case in which such pardon or reprieve might directly affect the interests of our Empire, or of any country or place beyond the jurisdiction of the Government of the Dominion, the Governor General shall, before deciding as to either pardon or reprieve, take those interests specially into his own personal consideration in conjunction with such advice as aforesaid

8 All commissions granted by the Governor-General to any persons to be judges, justices of the peace, or other officers shall, *unless otherwise provided by law, be granted during pleasure only*

9 The Governor General shall not quit the Dominion without having first obtained leave from us for so doing under our Sign Manual and Signet, or through one of our Principal Secretaries of State except for the purpose of visiting the Governor General of the Commonwealth of Australia or the Governor of any neighbouring colony or State for periods not exceeding one month at any one time, nor exceeding in the aggregate one month for every year's service in the Dominion

10 The temporary absence of the Governor-General for any period not exceeding one month shall not, if he have previously informed the Executive Council in writing, of his intended absence, and if he have duly appointed a deputy in accordance with our said Letters Patent, nor shall any extension of such period sanctioned by one of our Principal Secretaries of State and not exceeding 14 days, be deemed a departure from the Dominion within the meaning of our said Letters Patent

11 From and after the date of the coming into operation of our above recited Letters Patent of even date, the Instructions issued to the Governor of the Dominion of New Zealand under the Sign Manual and Signet of His late Majesty King Edward VII, bearing date the 18th day of November, 1907, shall, without prejudice to anything lawfully done thereunder, be revoked

Given at our Court at Saint James's this 11th day of May, 1917, in the 8th year of our reign

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## 7. Electoral Act, 1927 (as amended 1934 and 1936).

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PART I.—*Constitution of House*

3. (1) It shall be lawful for the Governor-General from time to time, as occasion requires, by proclamation in His Majesty's name, to summon and call together a House of Representatives in and for New Zealand, consisting of 76 members, in addition to 4 Maori members as provided in part IV hereof.

(2) Every such House of Representatives shall, unless the General Assembly is sooner dissolved, continue for a period of 4 years, computed from the day fixed for the return of the writs issued for choosing such House, and no longer.

\* \* \*

## QUALIFICATION OF MEMBERS

15. (1) Subject to the provisions of this Act, every person registered as an elector, but no other person, is qualified to be a candidate and to be elected a member of Parliament for any electoral district :

Provided that a person shall not be so elected—

(a) Who is disqualified as an elector under any of the provisions of this Act ; or

(b) Who, being a bankrupt within the meaning of " The Bankruptcy Act, 1908," has not obtained an order of discharge under that Act ; or

(c) Who is a member of the Legislative Council ; or

(d) Who is a civil servant or a contractor.

\* \* \*

PART II.—*Preliminary to the Election*

## QUALIFICATION OF ELECTORS

28. (1) The members of Parliament shall be chosen in every electoral district by the votes of the inhabitants of New Zealand who possess within the district the following qualification, that is to say—

(a) Every person lawfully on the existing roll of the district in respect of a property qualification, so long as he retains such qualification.

(b) Every person lawfully on the existing roll of the district as provided by the next succeeding sub-section.

(2) Every adult person who has resided for one year in New Zealand, and who has resided in any electoral district for not less than 3 months immediately preceding the date of his application for registration as an elector of that district and who is a British subject either by birth or by naturalisation in New Zealand, is entitled, subject to the provisions of this Act to be registered as an elector of that district

Provided that Maoris (other than half castes) shall not be entitled to be registered as electors under this sub section

(3) For all the purposes of this Act a person shall be deemed to have resided within the district wherein he has his usual place of abode notwithstanding his occasional absence from such district, and notwithstanding his absence for any period while serving His Majesty as a member of any naval or military force, or in any capacity in connection with such force while on active service and notwithstanding his absence for any period at the seat of Government in attendance as a member of either House of Parliament

\* \* \*

30 A person shall not be entitled to be registered on more than one electoral roll

31 (1) Maoris shall be qualified only to vote at elections of Maori members as provided in part IV of this Act

(2) A half caste registered under this part of this Act shall not be qualified to vote at any election of Maori members

(3) Every application and declaration to be made by a half-caste to be registered under this part of this Act shall be made in manner specified in section 44 hereof

\* \* \*

#### PART IV — *Maori Representation*

180 (1) In addition to the 76 members of the House of Representatives mentioned in section 3 hereof, there shall be 4 members of the said House to represent therein the inhabitants of New Zealand of the Maori race

(2) Such members shall be chosen respectively by the votes of the Maoris inhabiting each of the several Maori electoral districts hereinafter mentioned

181 (1) A half caste who is registered under part II of this Act or<sup>1</sup> who having been so registered has within the preceding 12 months voted at an election under part III of this Act, shall not be entitled to vote at an election of members under this part of this Act

(2) A Maori of unsound mind, or a Maori convicted of an offence punishable by death or by imprisonment for one year or upwards within any part of His Majesty's dominions, or convicted in New Zealand as a public defaulter, or under "The Police Offences Act, 1927," as an idle and disorderly person or as a rogue and vagabond, unless such offender has received a free pardon or has undergone the sentence or imprisonment to which he was adjudged for such offence, shall not be entitled to vote.

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182. Every adult Maori who is not disqualified under this Act is entitled to vote as an elector at any election of a member of Parliament for the Maori electoral district in which he resides.

183. Every such male elector is qualified to be a member of Parliament for any Maori electoral district.

184. (1) A member elected under the provisions of this part of this Act shall not be capable of being appointed to any office of emolument under the Government of New Zealand so long as he is a member of Parliament.

(2) If any such member at the time of his election holds any such office of emolument as aforesaid, the salary or emolument of such office shall neither be increased nor diminished during such time as he is a member.

(3) The provisions of this section do not apply to the holding of a seat in the Executive Council, or to an appointment as adviser or assessor of or in connection with the Executive Council, or to the receipt of salary in respect only of such seat or such appointment, such seat or appointment being held on the ordinary tenure of responsible government.

185. (1) For the purpose of this part of this Act New Zealand shall be divided into four Maori electoral districts, each of which shall return one member.

(2) The names of such electoral districts shall be as follow :—

The Northern Maori Electoral District.

The Eastern Maori Electoral District.

The Western Maori Electoral District.

The Southern Maori Electoral District.

(3) The Chatham Islands shall be deemed to form part of the Western Maori Electoral District.

(4) The Governor-General may at any time by proclamation redefine and declare, and from time to time alter and vary, the boundaries of the several Maori electoral districts; and such boundaries so from time to time redefined and declared shall be

taken and deemed to be the boundaries of the said Maori electoral districts as fully as if the same has been set forth in this part of this Act

(5) The person who at the time of the making and publishing of any proclamation altering the boundaries of any Maori electoral district is the member of Parliament for such district shall (if in all other respects duly qualified) be and be deemed to be the member for such one of the Maori electoral districts affected by such alteration as the Governor General in and by any such proclamation determines, as if such member had been originally elected for such last-mentioned district

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## DEPENDENCIES OF NEW ZEALAND COOK ISLANDS

The Cook Islands are governed in accordance with the provisions of "The Cook Islands Act" passed by the Dominion Parliament on October 11th, 1915<sup>(1)</sup>, which was successively amended by Acts dated December 5th, 1921<sup>(2)</sup>, August 20th, 1923<sup>(3)</sup>, July 31st, 1925<sup>(4)</sup>, August 23rd, 1926<sup>(5)</sup>, and December 9th, 1932<sup>(6)</sup>

## ROSS DEPENDENCY

By Imperial Order in Council of July 30th, 1923<sup>(7)</sup>, His Majesty's dominions in the Antarctic Seas comprising all the islands and territories between the 160th degree of east longitude and the 150th degree of west longitude which are situated south of the 60th degree of south latitude were named "the Ross Dependency," and were placed under the governorship of the Governor-General and Commander-in-Chief of the Dominion of New Zealand

(1) *Statutes of the Dominion of New Zealand* 1915 page 183

(2) *Ibid*, 1921, page 37

(3) *Ibid*, 1923, page 16

(4) *Ibid*, 1925 page 5

(5) *Ibid*, 1926 page 446

(6) *Ibid*, 1932, page 177

(7) *State Papers*, Vol CXVII page 91

## UNION (OR TOKELAU) ISLANDS

By the Imperial "Union Islands (No. 2) Order in Council" of November 4th, 1925<sup>(1)</sup>, the islands of Fakaofu, Nukunono and Atafu were placed under the governorship of the Governor-General and Commander-in-Chief of the Dominion of New Zealand, with power to delegate such authority to the Administrator of the Territory of Western Samoa or other fit person. Authority was so delegated to the said Administrator by the New Zealand "Union Islands Order in Council" of March 8th, 1926.

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## WESTERN SAMOA MANDATED TERRITORY

Western Samoa is administered by New Zealand under a mandate dated the 17th December, 1920<sup>(2)</sup>. The constitution of the Territory is based on an Order of His Majesty in Council of the 11th March, 1920<sup>(3)</sup>, as amended by an Order of the 9th November, 1920<sup>(4)</sup>, and upon "The Samoa Act, 1921,"<sup>(5)</sup> of New Zealand which was amended in 1926<sup>(6)</sup> and 1927<sup>(7)</sup>. "The Samoa Act" provides for the appointment of an Administrator by the Governor-General and for the establishment of a partly nominated and partly elected Legislative Council.

Mandate—Geneva, December, 17, 1920.

The Council of the League of Nations :

Whereas by article 119 of the treaty of peace with Germany signed at Versailles on the 28th June, 1919<sup>(8)</sup>, Germany renounced in favour of the Principal Allied and Associated Powers all her rights over her overseas possessions, including therein German Samoa ; and

Whereas the Principal Allied and Associated Powers agreed that, in accordance with article 22, part I (Covenant of the League of Nations), of the said treaty, a mandate should be conferred upon His Britannic Majesty, to be exercised on his behalf by the Government of the Dominion of New Zealand, to administer German Samoa, and have proposed that the mandate should be formulated in the following terms ; and

(<sup>1</sup>) *State Papers*, Vol. CXXI, page 303.

(<sup>2</sup>) *Ibid.*, Vol. CXIII, page 1107.

(<sup>3</sup>) *Ibid.*, Vol. CXIII, page 18.

(<sup>4</sup>) *Ibid.*, Vol. CXIII, page 219.

(<sup>5</sup>) *Ibid.*, Vol. CXXI, page 500.

(<sup>6</sup>) *Statutes of the Dominion of New Zealand*, 1926, page 453.

(<sup>7</sup>) *Ibid.*, 1927, page 19.

(<sup>8</sup>) *State Papers*, Vol. CXII, page 1.



Whereas His Britannic Majesty, for and on behalf of the Government of the Dominion of New Zealand, has agreed to accept the mandate in respect of the said territory and has undertaken to exercise it on behalf of the League of Nations in accordance with the following provisions, and

Whereas, by the aforementioned article 22, paragraph 8, it is provided that the degree of authority, control or administration to be exercised by the mandatory, not having been previously agreed upon by the members of the League, shall be explicitly defined by the Council of the League of Nations

Confirming the said mandate, defines its terms as follows

Art 1 The territory over which a mandate is conferred upon His Britannic Majesty for and on behalf of the Government of the Dominion of New Zealand (hereinafter called "the mandatory") is the former German colony of Samoa

2 The mandatory shall have full power of administration and legislation over the territory subject to the present mandate as an integral portion of the Dominion of New Zealand, and may apply the laws of the Dominion of New Zealand to the territory, subject to such local modifications as circumstances may require

The mandatory shall promote to the utmost the material and moral well-being and the social progress of the inhabitants of the territory subject to the present mandate

3 The mandatory shall see that the slave trade is prohibited, and that no forced labour is permitted, except for essential public works and services, and then only for adequate remuneration

The mandatory shall also see that the traffic in arms and ammunition is controlled in accordance with principles analogous to those laid down in the convention relating to the control of the arms traffic, signed on the 10th September, 1919<sup>(1)</sup>, or in any convention amending the same

The supply of intoxicating spirits and beverages to the natives shall be prohibited

4 The military training of the natives, otherwise than for purposes of internal police and the local defence of the territory, shall be prohibited. Furthermore, no military or naval bases shall be established or fortifications erected in the territory

5 Subject to the provisions of any local law for the maintenance of public order and public morals, the mandatory shall ensure in the territory freedom of conscience and the free exercise of all forms of worship, and shall allow all missionaries, nationals of any State member of the League of Nations, to enter into, travel and reside in the territory for the purpose of prosecuting their calling

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<sup>(1)</sup> *State Papers*, Vol. CXII, page 909

6. The mandatory shall make to the Council of the League of Nations an annual report to the satisfaction of the Council, containing full information with regard to the territory, and indicating the measures taken to carry out the obligations assumed under articles 2, 3, 4 and 5.

7. The consent of the Council of the League of Nations is required for any modification of the terms of the present mandate.

The mandatory agrees that, if any dispute whatever should arise between the mandatory and another member of the League of Nations relating to the interpretation or the application of the provisions of the mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice provided for by article 14 of the Covenant of the League of Nations.

The present declaration shall be deposited in the archives of the League of Nations. Certified copies shall be forwarded by the Secretary-General of the League of Nations to all Powers signatories of the treaty of peace with Germany.

Made at Geneva the 17th day of December, 1920.

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# UNION OF SOUTH AFRICA

- 1 Act of the Imperial Parliament constituting the Union —  
September 20, 1909

Text in *State Papers*, Vol CII, page 5

## *Amendments*

### ACTS OF THE UNION PARLIAMENT

- April 25, 1911 Text in *Statutes of the Union of South Africa* 1910-11 page 616  
May 29 1920 Text in *Statutes of the Union of South Africa*, 1920, page 26  
May 15 1925 Text in *Statutes of the Union of South Africa* 1925 page 24  
July 27 1925 Text in *Statutes of the Union of South Africa*, 1925 page 340  
February 5 1926 Text in *Statutes of the Union of South Africa*, 1926, page 2  
June 7, 1926 Text in *Statutes of the Union of South Africa* 1926 page 380  
June 8 1926 Text in *Statutes of the Union of South Africa*, 1926, page 794  
March 26, 1927 Text in *Statutes of the Union of South Africa*, 1927, page 88  
June 1, 1933 Text in *Statutes of the Union of South Africa*, 1933, page 132  
June 2, 1934 Text in *Statutes of the Union of South Africa*, 1934, page 472  
June 22, 1934 Text in *Statutes of the Union of South Africa*, 1934, page 914  
March 29, 1935 Text in *Statutes of the Union of South Africa*, 1935, page 10  
May 7, 1935 Text in *Statutes of the Union of South Africa*, 1935 page 298  
May 10 1935 Text in *Statutes of the Union of South Africa*, 1935, page 528  
April 16 1936 Text in *Statutes of the Union of South Africa*, 1936, page 36  
April 21, 1937 . Text in *Union of South Africa Government Gazette (Extraordinary)*, April 23, 1937

2. Act of the Union Parliament to make further Provision  
for the Dissolution of the Senate — June 9, 1926

Text in *Statutes of the Union of South Africa*, 1926, page 824

3. Act of the Union Parliament to provide for the Declaration of the Status of the Union and for the Adoption of certain Parts of "The Statute of Westminster, 1931."—June 22, 1934.

Text in *Statutes of the Union of South Africa*, 1934, page 914.

4. Act of the Union Parliament to provide for the King's Acts as Head of the Executive and for the Use of Royal Seals in connexion therewith.—June 22, 1934.

Text in *Statutes of the Union of South Africa*, 1934, page 922.

5. Letters Patent relating to the Office of Governor-General—February 15, 1937.

6. Royal Instructions to the Governor-General—Westminster, February 15, 1937.

.. .. .

1. Act of Parliament, 1909 (as amended to 1937).

[9 Edw. VII, c. 9.—September 20, 1909.]

*Whereas it is desirable for the welfare and future progress of South Africa that the several British Colonies therein should be united under one Government in a legislative union under the Crown of Great Britain and Ireland :*

*And whereas it is expedient to make provision for the union of the Colonies of the Cape of Good Hope, Natal, the Transvaal, and the Orange River Colony on terms and conditions to which they have agreed by resolution of their respective Parliaments, and to define the executive, legislative, and judicial powers to be exercised in the government of the Union :*

*And whereas it is expedient to make provision for the establishment of Provinces with powers of legislation and administration in local matters and in such other matters as may be specially reserved for provincial legislation and administration :*

*And whereas it is expedient to provide for the eventual admission into the Union or transfer to the Union of such parts of South Africa as are not originally included therein :*

*Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—*

## I.—PRELIMINARY

1. The people of the Union acknowledge the sovereignty and guidance of Almighty God.

2 In this Act, unless it is otherwise expressed or implied, "heirs and successors" shall be taken to mean His Majesty's heirs and successors in the sovereignty of the United Kingdom of Great Britain and Ireland as determined by the laws relating to the succession of the Crown of the United Kingdom of Great Britain and Ireland, the words "the Union" shall be taken to mean the Union of South Africa as constituted under this Act, and the words "Houses of Parliament," "House of Parliament," or "Parliament," shall be taken to mean the Parliament of the Union

3 The provisions of this Act referring to the King shall extend to His Majesty's heirs and successors in the sovereignty of the United Kingdom of Great Britain and Ireland

## II—THE UNION

4 It shall be lawful for the King, with the advice of the Privy Council, to declare by proclamation<sup>(1)</sup> that, on and after a day therein appointed, not being later than one year after the passing of this Act, the Colonies of the Cape of Good Hope, Natal, the Transvaal, and the Orange River Colony, hereinafter called "the Colonies," shall be united in a legislative union under one Government under the name of "the Union of South Africa." On and after the day appointed by such proclamation the Government and Parliament of the Union shall have full power and authority within the limits of the Colonies, but the King may at any time after the proclamation appoint a Governor-General for the Union

5 The provisions of this Act shall, unless it is otherwise expressed or implied, take effect on and after the day so appointed

6 The Colonies mentioned in section 4 shall become original Provinces of the Union under the names of "Cape of Good Hope," "Natal," "Transvaal" and "Orange Free State," as the case may be. The original Provinces shall have the same limits as the respective Colonies at the establishment of the Union

7 Upon any Colony entering the Union, "The Colonial Boundaries Act, 1895,"<sup>(2)</sup> and every other Act applying to any of the Colonies as being self-governing Colonies or Colonies with responsible Government, shall cease to apply to that Colony, but as from the date when this Act takes effect every such Act of Parliament shall apply to the Union

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(1) The proclamation was dated December 2 1909 (*State Papers*, Vol CII, page 39), and appointed May 31, 1910 as the date of the legislative union

(2) *State Papers*, Vol LXXXVII, page 967.

## III.—EXECUTIVE GOVERNMENT

8. [Repealed.]

9. The Governor-General shall be appointed by the King, and shall have and may exercise in the Union during the King's pleasure, but subject to this Act, such powers and functions of the King as His Majesty may be pleased to assign to him.

10. There shall be payable to the King out of the Consolidated Revenue Fund of the Union for the salary of the Governor-General an annual sum of £10,000. The salary of the Governor-General shall not be altered during his continuance in office.

11. The provisions of this Act relating to the Governor-General extend and apply to the Governor-General for the time being or such person as the King may appoint to administer the Government of the Union. The King may authorise the Governor-General to appoint any person to be his deputy within the Union during his temporary absence, and in that capacity to exercise for and on behalf of the Governor-General during such absence all such powers and authorities vested in the Governor-General as the Governor-General may assign to him, subject to any limitations expressed or directions given by the King; but the appointment of such deputy shall not affect the exercise by the Governor-General himself of any power or function.

12. There shall be an Executive Council to advise the Governor-General in the government of the Union, and the members of the Council shall be chosen and summoned by the Governor-General and sworn as Executive Councillors, and shall hold office during his pleasure.

13. The provisions of this Act referring to the Governor-General in Council shall be construed as referring to the Governor-General acting with the advice of the Executive Council.

14. (1) The Governor-General may appoint officers not exceeding eleven in number to administer such departments of State of the Union as the Governor-General in Council may establish; such officers shall hold office during the pleasure of the Governor-General. They shall be members of the Executive Council and shall be the King's Ministers of State for the Union. After the first general election of members of the House of Assembly, as hereinafter provided, no Minister shall hold office for a longer period than 3 months unless he is or becomes a member of either House of Parliament.

(2) Whenever any Minister of State is from any cause whatever unable to perform any of the functions of his office, the Governor-General in Council may appoint any member of the Executive

Council (whether he has or has not been appointed as a Minister of State, under sub section (1) )to act in the said Minister's stead, either generally or in the performance of any particular function

15 The appointment and removal of all officers of the public service of the Union shall be vested in the Governor General in Council, unless the appointment is delegated by the Governor-General in Council or by this Act or by a law of Parliament to some other authority

16 All powers, authorities and functions which at the establishment of the Union are in any of the Colonies vested in the Governor or in the Governor in Council or in any authority of the Colony, shall, as far as the same continue in existence and are capable of being exercised after the establishment of the Union, be vested in the Governor General or in the Governor General in Council, or in the authority exercising similar powers under the Union, as the case may be, except such powers and functions as are by *this Act or may by a law of Parliament be vested in some other authority*

17 The command in chief of the naval and military forces within the Union is vested in the King or in the Governor General as his representative

18 Save as in section 23 excepted, Pretoria shall be the seat of Government of the Union

#### IV—PARLIAMENT

19 The legislative power of the Union shall be vested in the Parliament of the Union herein called "Parliament," which shall consist of the King a Senate and a House of Assembly

20 The Governor-General may appoint such times for holding the sessions of Parliament as he thinks fit, and may also from time to time, by proclamation or otherwise, prorogue Parliament, and may in like manner dissolve the Senate and the House of Assembly simultaneously or the House of Assembly alone provided that the Senate shall not be dissolved within a period of 10 years after the establishment of the Union, and provided further that the dissolution of the Senate shall not affect any senators nominated by the Governor-General in Council

21 Parliament shall be summoned to meet not later than 6 months after the establishment of the Union

22 There shall be a session of Parliament once at least in every year, so that a period of 12 months shall not intervene between the last sitting of Parliament in one session and its first sitting in the next session

23 Cape Town shall be the seat of the Legislature of the Union

*Senate*

24. For 10 years after the establishment of the Union the constitution of the Senate shall, in respect of the original Provinces, be as follows :—

(i) 8 senators shall be nominated by the Governor-General in Council, and for each original Province 8 senators shall be elected in the manner hereinafter provided.

(ii) The senators to be nominated by the Governor-General in Council shall hold their seats for 10 years. One-half of their number shall be selected on the ground mainly of their thorough acquaintance, by reason of their official experience or otherwise, with the reasonable wants and wishes of the coloured races in South Africa. If the seat of a senator so nominated shall become vacant, the Governor-General in Council shall nominate another person to be a senator, who shall hold his seat for 10 years.

(iii) After the passing of this Act, and before the day appointed for the establishment of the Union, the Governor of each of the Colonies shall summon a special sitting of both Houses of the Legislature, and the two Houses sitting together as one body and presided over by the Speaker of the Legislative Assembly shall elect 8 persons to be senators for the Province. Such senators shall hold their seats for 10 years. If the seat of a senator so elected shall become vacant, the Provincial Council of the Province for which such senator has been elected shall choose a person to hold the seat until the completion of the period for which the person in whose stead he is elected would have held his seat.

25. Parliament may provide for the manner in which the Senate shall be constituted after the expiration of 10 years, and unless and until such provision shall have been made—

(i) The provisions of the last preceding section with regard to nominated senators shall continue to have effect.

(ii) 8 senators for each Province shall be elected by the members of the Provincial Council of such Province together with the members of the House of Assembly elected for such Province. Such senators shall hold their seats for 10 years unless the Senate be sooner dissolved. If the seat of an elected senator shall become vacant, the members of the Provincial Council of the Province, together with the members of the House of Assembly elected for such Province, shall choose a person to hold the seat until the completion of the period for which the person in whose stead he is elected would have held his seat. The Governor-General in Council shall make regulations for the joint election of senators prescribed in this section.



26 The qualifications of a senator shall be as follows —

He must—

- (a) be not less than 30 years of age,
- (b) be qualified to be registered as a voter for the election of members of the House of Assembly in one of the Provinces,
- (c) have resided for 5 years within the limits of the Union as existing at the time when he is elected or nominated, as the case may be
- (d) be a person of European descent who has acquired Union nationality whether—
  - (i) by birth or
  - (ii) by domicile as a British subject, or
  - (iii) by naturalisation, or otherwise, in terms of Act 40 of 1927<sup>(1)</sup>, or of Act 14 of 1932<sup>(2)</sup>
- (e) in the case of an elected senator, be the registered owner of immovable property within the Union of the value of not less than £500 over and above any special mortgages thereon

For the purposes of this section residence in, and property situated within, a Colony before its incorporation in the Union shall be treated as residence in and property situated within the Union

27 The Senate shall, before proceeding to the despatch of any other business choose a senator to be the President of the Senate, and as often as the office of President becomes vacant the Senate shall again choose a senator to be the President. The President shall cease to hold office if he ceases to be a senator. He may be removed from office by a vote of the Senate, or he may resign his office by writing under his hand addressed to the Governor General

28 Prior to or during any absence of the President the Senate may choose a senator to perform his duties in his absence

29 A senator may, by writing under his hand addressed to the Governor-General, resign his seat, which thereupon shall become vacant. The Governor-General shall as soon as practicable cause steps to be taken to have the vacancy filled

30 The presence of at least 12 senators shall be necessary to constitute a meeting of the Senate for the exercise of its powers

31 All questions in the Senate shall be determined by a majority of votes of senators present other than the President or the presiding senator, who shall however, have and exercise a casting vote in the case of an equality of votes

(1) *State Papers* Vol CXXVI page 508 (2) *Ibid* Vol CXXXV page 247

*House of Assembly*

32. The House of Assembly shall be composed of members directly chosen by the voters of the Union in electoral divisions delimited as hereinafter provided.

33. The number of members to be elected in the original Provinces at the first election and until the number is altered in accordance with the provisions of this Act shall be as follows :—

Cape of Good Hope .. .. .	51
Natal .. .. .	17
Transvaal .. .. .	36
Orange Free State .. .. .	17

These numbers may be increased as provided in the next succeeding section, but shall not, in the case of any original Province, be diminished until the total number of members of the House of Assembly in respect of the Provinces herein provided for reaches 150, or until a period of 10 years has elapsed after the establishment of the Union, whichever is the longer period.

34. The number of members to be elected in each Province, as provided in section 33, shall be increased from time to time as may be necessary in accordance with the following provisions :—

(i) In this section the expression—

“ adult Union nationals ” means Union nationals (both male and female) of the age of 21 years or over, but does not include members of His Majesty’s regular forces on full pay, other than members of the South African Permanent Force constituted under section 1 of “ The South Africa Defence Act Amendment Act, 1922 ” (Act No. 22 of 1922) ;

“ quota of the Union ” means the quotient obtained by dividing the total number of European adult Union nationals as ascertained at the census taken in the year 1936 by the number 150.

(ii) In 1911, and every 5 years thereafter, till 1951 and thereafter every 10 years, a census of the European population of the Union shall be taken for the purposes of this Act.

(iii) After any such census the number of European adult Union nationals in each Province shall be compared with the number of European adult Union nationals as ascertained at the census of 1936, and, in the case of any Province where an increase is shown, as compared with the census of 1936, equal to the quota of the Union or any multiple thereof, the number of members allotted to such Province in the last preceding section shall be increased by an additional member or an additional number of members equal to such multiple, as the case may be.

(iv) Notwithstanding anything herein contained, no additional member shall be allotted to any Province until the total number of European adult Union nationals in such Province exceeds the quota of the Union multiplied by the number of members allotted to such Province for the time being, and thereupon additional members shall be allotted to such Province in respect only of such excess

(v) As soon as the number of members of the House of Assembly to be elected in the original Provinces in accordance with the preceding sub sections reaches the total of 150, such total shall not be further increased unless and until Parliament otherwise provides, and subject to the provisions of the last preceding section the distribution of members among the Provinces shall be such that the proportion between the number of members to be elected at any time in each Province and the number of European adult Union nationals in such Province, as ascertained at the last preceding census, shall as far as possible be identical throughout the Union

35 (1) Parliament may by law prescribe the qualifications which shall be necessary to entitle persons to vote at the election of members of the House of Assembly, but no such law shall disqualify any person (other than a native, as defined in section 1 of "The Representation of Natives Act, 1936") in the Province of the Cape of Good Hope who, under the laws existing in the Colony of the Cape of Good Hope at the establishment of the Union, is or may become capable of being registered as a voter from being so registered in the Province of the Cape of Good Hope by reason of his race or colour only, or disqualify any native, as so defined, who under the said Act would be or might become capable of being registered in the Cape native voters' roll instituted under that Act from being so registered, or alter the number of the members of the House of Assembly who in terms of the said Act may be elected by the persons registered in the said roll, unless the bill embodying such disqualification or alteration be passed by both Houses of Parliament sitting together, and at the third reading be agreed to by not less than two-thirds of the total number of members of both Houses. A bill so passed at such joint sitting shall be taken to have been duly passed by both Houses of Parliament

(2) No person (other than a native as so defined) who at the passing of any such law is registered as a voter in any Province shall be removed from the register by reason only of any disqualification based on race or colour

36 Subject to the provisions of the last preceding section, the qualifications of parliamentary voters, as existing in the several Colonies at the establishment of the Union, shall be the qualifications necessary to entitle persons in the corresponding Provinces to vote for the election of members of the House of Assembly. Provided that no member of His Majesty's regular forces on full pay shall be entitled to be registered as a voter

37. (1) Subject to the provisions of this Act, the laws in force in the Colonies at the establishment of the Union relating to elections for the more numerous Houses of Parliament in such Colonies respectively, the registration of voters, the oaths or declarations to be taken by voters, returning officers, the powers and duties of such officers, the proceedings in connection with elections, election expenses, corrupt and illegal practices, the hearing of election petitions and the proceedings incident thereto, the vacating of seats of members, and the proceedings necessary for filling such vacancies, shall, *mutatis mutandis*, apply to the elections in the respective Provinces of members of the House of Assembly.

(2) Notwithstanding anything to the contrary in any of the said laws contained, at any general election of members of the House of Assembly, all polls shall be taken on one and the same day in all the electoral divisions throughout the Union, such day to be appointed by the Governor-General in Council.

38. Between the date of the passing of this Act and the date fixed for the establishment of the Union, the Governor in Council of each of the Colonies shall nominate a judge of any of the Supreme or High Courts of the Colonies, and the judges so nominated shall, upon acceptance by them respectively of such nomination, form a joint commission, without any further appointment, for the purpose of the first division of the Provinces into electoral divisions. The High Commissioner for South Africa shall forthwith convene a meeting of such commission at such time and place in one of the Colonies as he shall fix and determine. At such meeting the commissioners shall elect one of their number as chairman of such commission. They shall thereupon proceed with the discharge of their duties under this Act, and may appoint persons in any Province to assist them or to act as assessors to the commission or with individual members thereof for the purpose of inquiring into matters connected with the duties of the commission. The commission may regulate their own procedure and may act by a majority of their number. All moneys required for the payment of the expenses of such commission before the establishment of the Union in any of the Colonies shall be provided by the Governor in Council of such Colony. In case of the death, resignation, or other disability of any of the Commissioners before the establishment of the Union, the Governor in Council of the Colony in respect of which he was nominated shall forthwith nominate another judge to fill the vacancy. After the establishment of the Union the expenses of the commission shall be defrayed by the Governor-General in Council, and any vacancies shall be filled by him.

39 The commission shall divide each Province into electoral divisions, each returning one member

40 (1) For the purpose of such division as is in the last preceding section mentioned, the quota of each Province shall be obtained by dividing the total number of voters in the Province, as ascertained at the last registration of voters, by the number of members of the House of Assembly to be elected therein

(2) Each Province shall be divided into electoral divisions in such a manner that each such division shall, subject to the provisions of sub section (3) of this section, contain a number of voters, as nearly as may be, equal to the quota of the Province

(3) The Commissioners shall give due consideration to—

(a) community or diversity of interests ,

(b) means of communication ,

(c) physical features ,

(d) existing electoral boundaries ,

(e) sparsity or density of population ,

*in such manner that, while taking the quota of voters as the basis of division, the commissioners may, whenever they deem it necessary, depart therefrom but in no case to any greater extent than 15 per cent more or 15 per cent less than the quota*

41 As soon as may be after every census referred to in paragraph (11) of section 34, the Governor-General in Council shall appoint a commission consisting of three judges of the Supreme Court of South Africa to carry out any re-division which may have become necessary as between the different electoral divisions in each Province and to provide for the allocation of the number of members to which such Province may have become entitled under the provisions of this Act. In carrying out such re-division and allocation the commission shall have the same powers and proceed upon the same principles as are by this Act provided in regard to the original division

42 (1) The joint commission constituted under section 38, and any subsequent commission appointed under the provisions of the last preceding section, shall submit to the Governor General in Council—

(a) a list of electoral divisions, with the names given to them by the commission and a description of the boundaries of every such division ,

(b) a map or maps showing the electoral divisions into which the provinces have been divided ,

(c) such further particulars as they consider necessary

(2) The Governor-General in Council may refer to the commission for its consideration any matter relating to such list or arising out of the powers or duties of the commission.

(3) The Governor-General in Council shall proclaim the names and boundaries of the electoral divisions as finally settled and certified by the commission, or a majority thereof, and thereafter, until there shall be a re-division, the electoral divisions as named and defined shall be the electoral divisions of the Union in the Provinces.

(4) If any discrepancy shall arise between the description of the divisions and the aforesaid map or maps, the description shall prevail.

43. Any alteration in the number of members of the House of Assembly to be elected in the several Provinces, and any re-division of the Provinces into electoral divisions, shall, in respect of the election of members of the House of Assembly, come into operation at the next general election held after the completion of the re-division or of any allocation consequent upon such alteration, and not earlier.

44. The qualifications of a member of the House of Assembly shall be as follows :—

He must—

(a) be qualified to be registered as a voter for the election of members of the House of Assembly in one of the Provinces ;

(b) have resided for 5 years within the limits of the Union as existing at the time when he is elected ;

(c) be a person of European descent who has acquired Union nationality whether—

(i) by birth, or

(ii) by domicile as a British subject, or

(iii) by naturalisation, or otherwise, in terms of Act 40 of 1927 or of Act 14 of 1932.

For the purposes of this section, residence in a Colony before its incorporation in the Union shall be treated as residence in the Union.

45. Every House of Assembly shall continue for 5 years from the first meeting thereof, and no longer, but may be sooner dissolved by the Governor-General.

46. The House of Assembly shall, before proceeding to the despatch of any other business, choose a member to be the Speaker of the House, and, as often as the office of Speaker becomes vacant, the House shall again choose a member to be the Speaker. The Speaker shall cease to hold his office if he ceases to be a member. He may be removed from office by a vote of the House, or he may resign his office or his seat by writing under his hand addressed to the Governor-General.

47 Prior to or during the absence of the Speaker, the House of Assembly may choose a member to perform his duties in his absence

48 A member may, by writing under his hand<sup>(1)</sup> addressed to the Speaker or, if there is no Speaker, or if the Speaker is absent from the Union, to the Governor General, resign his seat, which shall thereupon become vacant

49 The presence of at least 30 members of the House of Assembly shall be necessary to constitute a meeting of the House for the exercise of its powers

50 All questions in the House of Assembly shall be determined by a majority of votes of members present other than the Speaker or the presiding member, who shall, however, have and exercise a casting vote in the case of an equality of votes

### *Both Houses of Parliament*

51 Every senator and every member of the House of Assembly shall, before taking his seat make and subscribe before the Governor-General or some person authorised by him, an oath or affirmation of allegiance in the following form —

#### OATH

I *A B* do swear that I will be faithful and bear true allegiance to His Majesty King or Queen (as the case may be) [*here insert the name of the King or Queen for the time being*] his [*or her*] heirs and successors, according to law So help me God

#### AFFIRMATION

I, *A B*, do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to His Majesty King or Queen (as the case may be) [*here insert the name of the King or Queen for the time being*], his [*or her*] heirs and successors, according to law

52 A member of either House of Parliament shall be incapable of being chosen or of sitting as a member of the other House Provided that every Minister of State who is a member of either House of Parliament shall have the right to sit and speak in the Senate and the House of Assembly, but shall vote only in the House of which he is a member

53 No person shall be capable of being chosen or of sitting as a senator or as a member of the House of Assembly who—

(a) has been at any time convicted of any crime or offence

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<sup>(1)</sup> By section 138 (1) of 'The Electoral Act 1918' of the Union, a telegraphic message addressed to the Speaker or Governor General is deemed to be a writing under the hand

for which he shall have been sentenced to imprisonment without the option of a fine for a term of not less than 12 months, unless he shall have received a grant of amnesty or a free pardon, or unless such imprisonment shall have expired at least 5 years before the date of his election ; or

(b) is an unrehabilitated insolvent ; or

(c) is of unsound mind, and has been so declared by a competent court ; or

(d) holds any office of profit under the Crown within the Union : Provided that the following persons shall not be deemed to hold an office of profit under the Crown for the purposes of this sub-section :

(1) A Minister of State for the Union.

(2) A person in receipt of a pension from the Crown.

(3) An officer or member of His Majesty's naval or military forces on retired or half pay, or an officer or member of the naval or military forces of the Union whose services are not wholly employed by the Union.

(4) Any person who has been appointed or became a justice of the peace under section 2 of " The Justices of the Peace and Oaths Act, 1914 " (Act No. 16 of 1914), and any justice of the peace appointed before the commencement of the said Act, who performs his functions as such by virtue of section 5 of that Act.

54. If a senator or member of the House of Assembly—

(a) becomes subject to any of the disabilities mentioned in the last preceding section ; or

(b) ceases to be qualified as required by law ; or

(c) fails for a whole ordinary session to attend without the special leave of the Senate or the House of Assembly, as the case may be ;

his seat shall thereupon become vacant.

55. If any person who is by law incapable of sitting as a senator or member of the House of Assembly shall, while so disqualified and knowing or having reasonable grounds for knowing that he is so disqualified, sit or vote as a member of the Senate or the House of Assembly, he shall be liable to a penalty of £100 for each day on which he shall so sit or vote, to be recovered on behalf of the Treasury of the Union by action in any superior court of the Union.

56. (1) Subject to the provisions of this section, every member of the Senate and the House of Assembly (excluding Ministers receiving salary under the Crown, the President of the Senate and the Speaker of the House of Assembly) shall receive an allowance of £700 per annum.

(2) For every day during which any such member fails to



attend a meeting of the House of which he is a member there shall be deducted the sum of £6 Provided that such member shall be exempted from deductions on account of such failure—

(a) for any day on which he attends a meeting of any committee of the House of which he is a member, and

(b) when his absence is due to his illness or to the summons or subpoena of a competent court (except a summons to answer a criminal charge upon which he is convicted), and

(c) when his absence is due to the death or serious illness of his wife and such absence is condoned by the Sessional Committee on Standing Orders of the Senate or the Committee on Standing Rules and Orders of the House of Assembly (as the case may be) and

(d) in respect of any further period of absence not exceeding 25 days on which he so fails to attend during a session at which the estimates of expenditure for the ordinary administrative services of a financial year are considered

(3) Subject to the deductions incurred, if any, the Clerk of the House concerned shall pay to every such member of the House of which he is Clerk the allowance aforesaid in monthly instalments, the first month to be reckoned from the date notified in the *Gazette* as the date on which the member concerned was nominated or elected (as the case may be)

(4) The amount of the allowances paid under this section shall be charged annually to the Consolidated Revenue Fund and the provision of this sub section shall be deemed to be an appropriation of every such amount

57 The powers, privileges, and immunities of the Senate and of the House of Assembly and of the members and committees of each House shall, subject to the provisions of this Act, be such as are declared by Parliament, and until declared shall be those of the House of Assembly of the Cape of Good Hope and of its members and committees at the establishment of the Union

58 Each House of Parliament may make rules and orders with respect to the order and conduct of its business and proceedings. Until such rules and orders shall have been made the rules and orders of the Legislative Council and House of Assembly of the Cape of Good Hope at the establishment of the Union shall, *mutatis mutandis*, apply to the Senate and House of Assembly respectively. If a joint sitting of both Houses of Parliament is required under the provisions of this Act, it shall be convened by the Governor-General by message to both Houses. At any such joint sitting the Speaker of the House of Assembly shall preside and the rules of the House of Assembly shall, as far as practicable, apply.

*Powers of Parliament*

59. Parliament shall have full power to make laws for the peace, order, and good government of the Union.

60. (1) Bills appropriating revenue or moneys or imposing taxation shall originate only in the House of Assembly. But a bill shall not be taken to appropriate revenue or moneys or to impose taxation by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties.

(2) The Senate may not amend any bills so far as they impose taxation or appropriate revenue or moneys for the services of the Government.

(3) The Senate may not amend any bill so as to increase any proposed charges or burden on the people.

61. Any bill which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation.

62. The House of Assembly shall not originate or pass any vote, resolution, address, or bill for the appropriation of any part of the public revenue or of any tax or impost to any purpose unless such appropriation has been recommended by message from the Governor-General during the session in which such vote, resolution, address, or bill is proposed.

63. If the House of Assembly passes any bill and the Senate rejects or fails to pass it or passes it with amendments to which the House of Assembly will not agree, and if the House of Assembly in the next session again passes the bill with or without any amendments which have been made or agreed to by the Senate and the Senate rejects or fails to pass it or passes it with amendments to which the House of Assembly will not agree, the Governor-General may during that session convene a joint sitting of the members of the Senate and House of Assembly. The members present at any such joint sitting may deliberate and shall vote together upon the bill as last proposed by the House of Assembly and upon amendments, if any, which have been made therein by one House of Parliament and not agreed to by the other; and any such amendments which are affirmed by a majority of the total number of members of the Senate and House of Assembly present at such sitting shall be taken to have been carried, and if the bill with the amendments, if any, is affirmed by a majority of the members of the Senate and House of Assembly present at such sitting, it shall be taken to have been duly passed by both Houses of Parliament: Provided that, if the Senate shall reject or fail to pass any bill dealing with the appropriation of revenue or moneys for the public service, such joint sitting may be convened during the same session in which the Senate so rejects or fails to pass such bill.

64 When a bill is presented to the Governor General for the King's assent, he shall declare according to his discretion but subject to the provisions of this Act, and to such instructions as may from time to time be given in that behalf by the King, that he assents in the King's name or that he withholds assent. The Governor-General may return to the House in which it originated any bill so presented to him, and may transmit therewith any amendments which he may recommend, and the House may deal with the recommendation.

65-6 [Repealed]

67 As soon as may be after any law shall have been assented to in the King's name by the Governor General the Clerk of the House of Assembly shall cause two fair copies of such law, one being in the English and the other in the Dutch language (one of which copies shall be signed by the Governor General), to be enrolled of record in the office of the Registrar of the Appellate Division of the Supreme Court of South Africa, and such copies shall be conclusive evidence as to the provisions of every such law, and in case of conflict between the two copies thus deposited that signed by the Governor General shall prevail.

## V—THE PROVINCES

### *Administrators*

68 (1) In each Province there shall be a chief executive officer appointed by the Governor General in Council who shall be styled "the Administrator of the Province," and in whose name all executive acts relating to provincial affairs therein shall be done.

(2) In the appointment of the Administrator of any Province the Governor General in Council shall, as far as practicable, give preference to persons resident in such Province.

(3) Such Administrator shall hold office for a term of 5 years and shall not be removed before the expiration thereof except by the Governor-General in Council for cause assigned, which shall be communicated by message to both Houses of Parliament within one week after the removal, if Parliament be then sitting or, if Parliament be not sitting, then within one week after the commencement of the next ensuing session.

(4) The Governor-General in Council may from time to time appoint a Deputy Administrator to execute the office and functions of the Administrator during his absence, illness, or other inability.

69 The salaries of the Administrators shall be fixed and provided by Parliament, and shall not be reduced during their respective terms of office.

*Provincial Councils*

70. (1) There shall be a Provincial Council in each Province consisting of the same number of members as are elected in the Province for the House of Assembly : Provided that, in any Province whose representatives in the House of Assembly shall be less than 25 in number, the Provincial Council shall consist of 25 members.

(2) Any person qualified to vote for the election of members of the Provincial Council shall be qualified to be a member of such Council.

71. (1) The members of the Provincial Council shall be elected by the persons qualified to vote for the election of members of the House of Assembly in the Province voting in the same electoral divisions as are delimited for the election of members of the House of Assembly : Provided that, in any Province in which less than 25 members are elected to the House of Assembly, the delimitation of the electoral divisions, and any necessary re-allocation of members or adjustment of electoral divisions, shall be effected by the same commission and on the same principles as are prescribed in regard to the electoral divisions for the House of Assembly.

(2) Any alteration in the number of members of the Provincial Council, and any re-division of the Province into electoral divisions, shall come into operation at the next general election for such council held after the completion of such re-division, or of any allocation consequent upon such alteration, and not earlier.

(3) The election shall take place at such times as the Administrator shall by proclamation direct, and the provisions of section 37 applicable to the election of members of the House of Assembly shall, *mutatis mutandis*, apply to such elections.

72. The provisions of sections 53, 54 and 55, relative to members of the House of Assembly, shall, *mutatis mutandis*, apply to members of the Provincial Councils : Provided that any member of a Provincial Council who shall become a member of either House of Parliament shall thereupon cease to be a member of such Provincial Council.

73. Each Provincial Council shall continue for 5 years from the date of its first meeting, and shall not be subject to dissolution save by effluxion of time.

74. The Administrator of each Province shall by proclamation fix such times for holding the sessions of the Provincial Council as he may think fit, and may from time to time prorogue such Council : Provided that there shall be a session of every Provincial Council once at least in every year, so that a period of 12 months shall not intervene between the last sitting of the Council in one session and its first sitting in the next session.

75. The Provincial Council shall elect from among its members a chairman, and may make rules for the conduct of its proceedings.

Such rules shall be transmitted by the Administrator to the Governor-General, and shall have full force and effect unless and until the Governor-General in Council shall express his disapproval thereof in writing addressed to the Administrator

76 The members of the Provincial Council shall receive such allowances as shall be determined by the Governor-General in Council

77 There shall be freedom of speech in the Provincial Council, and no member shall be liable to any action or proceeding in any court by reason of his speech or vote in such Council

### *Executive Committees*

78 (1) Each Provincial Council shall at its first meeting after any general election elect from among its members or otherwise, four persons to form with the Administrator, who shall be chairman, an Executive Committee for the Province. The members of the Executive Committee other than the Administrator shall hold office until the election of their successors in the same manner

(2) Such members shall receive such remuneration as the Provincial Council, with the approval of the Governor-General in Council, shall determine

(3) A member of the Provincial Council shall not be disqualified from sitting as a member by reason of his having been elected as a member of the Executive Committee

(4) Any casual vacancy arising in the Executive Committee shall be filled by election by the Provincial Council if then in session or, if the Council is not in session by a person appointed by the Executive Committee to hold office temporarily pending an election by the Council

79 The Administrator and any other member of the Executive Committee of a Province, not being a member of the Provincial Council, shall have the right to take part in the proceedings of the Council, but shall not have the right to vote

80 The Executive Committee shall on behalf of the Provincial Council carry on the administration of provincial affairs. Until the first election of members to serve on the Executive Committee such administration shall be carried on by the Administrator. Whenever there are not sufficient members of the Executive Committee to form a quorum according to the rules of the Committee, the Administrator shall, as soon as practicable, convene a meeting of the Provincial Council for the purpose of electing members to fill the vacancies, and until such election the Administrator shall carry on the administration of provincial affairs

81. Subject to the provisions of this Act, all powers, authorities, and functions which at the establishment of the Union are in any

of the Colonies vested in or exercised by the Governor or the Governor in Council, or any Minister of the Colony, shall after such establishment be vested in the Executive Committee of the Province so far as such powers, authorities, and functions relate to matters in respect of which the Provincial Council is competent to make ordinances.

82. Questions arising in the Executive Committee shall be determined by a majority of votes of the members present, and, in case of an equality of votes, the Administrator shall have also a casting vote. Subject to the approval of the Governor-General in Council, the Executive Committee may make rules for the conduct of its proceedings.

83. Subject to the provisions of any law passed by Parliament regulating the conditions of appointment, tenure of office, retirement and superannuation of public officers, the Executive Committee shall have power to appoint such officers as may be necessary, in addition to officers assigned to the Province by the Governor-General in Council under the provisions of this Act, to carry out the services entrusted to them and to make and enforce regulations for the organisation and discipline of such officers.

84. In regard to all matters in respect of which no powers are reserved or delegated to the Provincial Council, the Administrator shall act on behalf of the Governor-General in Council when required to do so, and in such matters the Administrator may act without reference to the other members of the Executive Committee.

### *Powers of Provincial Councils*

85. Subject to the provisions of this Act and the assent of the Governor-General in Council as hereinafter provided, the Provincial Council may make ordinances in relation to matters coming within the following classes of subjects (that is to say) :—

(i) Direct taxation within the Province in order to raise a revenue for provincial purposes.

(ii) The borrowing of money on the sole credit of the Province with the consent of the Governor-General in Council and in accordance with regulations to be framed by Parliament.

(iii) Education, other than higher education, for a period of 5 years and thereafter until Parliament otherwise provides.

(iv) Agriculture to the extent and subject to the conditions to be defined by Parliament.

(v) The establishment, maintenance, and management of hospitals and charitable institutions.

(vi) Municipal institutions, divisional councils, and other local institutions having authority and functions in any area in respect of the local government of, or the preservation of public health in,

that area, including any such body as is referred to in section 7 of "The Public Health Act, 1919" (Act No 36 of 1919)

(vii) Local works and undertakings within the Province, other than railways and harbours and other than such works as extend beyond the borders of the Province, and subject to the power of Parliament to declare any work a national work and to provide for its construction by arrangement with the Provincial Council or otherwise

(viii) Roads, outspans, ponts, and bridges, other than bridges connecting two Provinces

(ix) Markets and pounds

(x) Fish and game preservation

(xi) The imposition of punishment by fine, penalty, or imprisonment for enforcing any law or any ordinance of the Province made in relation to any matter coming within any of the classes of subjects enumerated in this section

(xii) Generally all matters which, in the opinion of the Governor General in Council, are of a merely local or private nature in the Province

(xiii) All other subjects in respect of which Parliament shall by any law delegate the power of making ordinances to the Provincial Council

86 Any ordinance made by a Provincial Council shall have effect in and for the Province as long and as far only as it is not repugnant to any Act of Parliament

87 A Provincial Council may recommend to Parliament the passing of any law relating to any matter in respect of which such Council is not competent to make ordinances

88 In regard to any matter which requires to be dealt with by means of a private Act of Parliament, the Provincial Council of the Province to which the matter relates may, subject to such procedure as shall be laid down by Parliament, take evidence by means of a select committee or otherwise for and against the passing of such law, and, upon receipt of a report from such Council, together with the evidence upon which it is founded, Parliament may pass such Act without further evidence being taken in support thereof

89 A provincial revenue fund shall be formed in every Province, into which shall be paid all revenues raised by or accruing to the Provincial Council and all moneys paid over by the Governor-General in Council to the Provincial Council. Such fund shall be appropriated by the Provincial Council by ordinance for the purposes of the provincial administration generally, or, in the case of moneys paid over by the Governor-General in Council for particular purposes, then for such purposes, but no such ordinance shall be passed by the Provincial Council unless the Administrator shall have first

recommended to the Council to make provision for the specific service for which the appropriation is to be made. No money shall be issued from the provincial revenue fund except in accordance with such appropriation and under warrant signed by the Administrator: Provided that, until the expiration of one month after the first meeting of the Provincial Council, the Administrator may expend such moneys as may be necessary for the services of the Province.

90. When a proposed ordinance has been passed by a Provincial Council it shall be presented by the Administrator to the Governor-General in Council for his assent. The Governor-General in Council shall declare within one month from the presentation to him of the proposed ordinance that he assents thereto, or that he withholds assent, or that he reserves the proposed ordinance for further consideration. A proposed ordinance so reserved shall not have any force unless and until, within one year from the day on which it was presented to the Governor-General in Council, he makes known by proclamation that it has received his assent.

91. An ordinance assented to by the Governor-General in Council and promulgated by the Administrator shall, subject to the provisions of this Act, have the force of law within the Province. The administrator shall cause two fair copies of every such ordinance, one being in the English and the other in the Dutch language (one of which copies shall be signed by the Governor-General), to be enrolled of record in the office of the Registrar of the Appellate Division of the Supreme Court of South Africa; and such copies shall be conclusive evidence as to the provisions of such ordinance, and, in case of conflict between the two copies thus deposited, that signed by the Governor-General shall prevail.

### *Miscellaneous*

92. (1) In each Province there shall be an Auditor of Accounts to be appointed by the Governor-General in Council.

(2) No such Auditor shall be removed from office except by the Governor-General in Council for cause assigned, which shall be communicated by message to both Houses of Parliament within one week after the removal, if Parliament be then sitting, and, if Parliament be not sitting, then within one week after the commencement of the next ensuing session.

(3) Each such Auditor shall receive out of the Consolidated Revenue Fund such salary as the Governor-General in Council, with the approval of Parliament, shall determine.

(4) Each such Auditor shall examine and audit the accounts of the Province to which he is assigned subject to such regulations and orders as may be framed by the Governor-General in Council



and approved by Parliament, and no warrant signed by the Administrator authorising the issuing of money shall have effect unless countersigned by such Auditor.

93 Notwithstanding anything in this Act contained, all powers, authorities and functions lawfully exercised at the establishment of the Union by divisional or municipal councils, or any other duly constituted local authority, shall be and remain in force until varied or withdrawn by Parliament or by a Provincial Council having power in that behalf

94 The seats of provincial government shall be—

For the Cape of Good Hope	Cape Town
For Natal	Pietermaritzburg
For the Transvaal	Pretoria
For the Orange Free State	Bloemfontein

## VI—THE SUPREME COURT OF SOUTH AFRICA

95 There shall be a Supreme Court of South Africa consisting of a Chief Justice of South Africa, the judges of appeal, and the other judges of the several divisions of the Supreme Court of South Africa in the Provinces

96 There shall be an Appellate Division of the Supreme Court of South Africa consisting of the Chief Justice of South Africa and four judges of appeal

97. The Governor General in Council may, during the absence, illness, or other incapacity of the Chief Justice of South Africa, or of any judge of appeal, appoint any other judge of the Supreme Court of South Africa to act temporarily as such Chief Justice, or judge of appeal, as the case may be

98 (1) The several Supreme Courts of the Cape of Good Hope, Natal, and the Transvaal, and the High Court of the Orange River Colony shall, on the establishment of the Union, become provincial divisions of the Supreme Court of South Africa within their respective Provinces, and shall each be presided over by a Judge-President

(2) The court of the eastern districts of the Cape of Good Hope, the High Court of Griqualand, the High Court of Witwatersrand, and the several circuit courts, shall become local divisions of the Supreme Court of South Africa within the respective areas of their jurisdiction as existing at the establishment of the Union

(3) The said provincial and local divisions, referred to in this Act as "superior courts," shall, in addition to any original jurisdiction exercised by the corresponding courts of the Colonies

at the establishment of the Union, have jurisdiction in all matters—

(a) in which the Government of the Union or a person suing or being sued on behalf of such Government is a party ;

(b) in which the validity of any provincial ordinance shall come into question.

(4) Unless and until Parliament shall otherwise provide, the said superior courts shall, *mutatis mutandis*, have the same jurisdiction in matters affecting the validity of elections of members of the House of Assembly and Provincial Councils as the corresponding courts of the Colonies have at the establishment of the Union in regard to parliamentary elections in such Colonies respectively.

99. All judges of the Supreme Courts of the Colonies, including the High Court of the Orange River Colony, holding office at the establishment of the Union shall on such establishment become judges of the Supreme Court of South Africa, assigned to the divisions of the Supreme Court in the respective Provinces, and shall retain all such rights in regard to salaries and pensions as they may possess at the establishment of the Union. The Chief Justices of the Colonies holding office at the establishment of the Union shall on such establishment become the Judges-President of the divisions of the Supreme Court in the respective Provinces, but shall so long as they hold that office retain the title of " Chief Justice " of their respective Provinces.

100. The Chief Justice of South Africa, the judges of appeal, and all other judges of the Supreme Court of South Africa to be appointed after the establishment of the Union shall be appointed by the Governor-General in Council, and shall receive such remuneration as Parliament shall prescribe, and their remuneration shall not be diminished during their continuance in office.

101. The Chief Justice of South Africa and other judges of the Supreme Court of South Africa shall not be removed from office except by the Governor-General in Council on an address from both Houses of Parliament in the same session praying for such removal on the ground of misbehaviour or incapacity.

102. Upon any vacancy occurring in any division of the Supreme Court of South Africa, other than the Appellate Division, the Governor-General in Council may, in case he shall consider that the number of judges of such court may with advantage to the public interest be reduced, postpone filling the vacancy until Parliament shall have determined whether such reduction shall take place.

103. (1) In every civil case in which, according to the law in force at the establishment of the Union, an appeal might have been made to the Supreme Court of any of the Colonies from a superior court in any of the Colonies, or from the High Court of Southern Rhodesia, the appeal shall be made only to the Appellate Division, except in cases of orders or judgments given by a single judge,

upon applications by way of motion or petition or on summons for provisional sentence or judgments as to costs only which by law are left to the discretion of the court. The appeal from any such orders or judgments shall be made to the provincial division corresponding to the court which before the establishment of the Union would have had jurisdiction in the matter. There shall be no further appeal against any judgment given on appeal by such provincial division except to the Appellate Division and then only if such provincial division shall have given special leave to appeal. Provided that if such provincial division shall have refused special leave to appeal the Appellate Division may on application being made thereto grant such special leave and may vary any order as to costs made by such provincial division in refusing such special leave.

(2) If any court grants special leave to appeal under the provisions of sub section (1) the court may order the appellant to find security for the costs of appeal in such an amount as may be fixed by such court and may fix the time within which such security shall be found.

104 In every case civil or criminal in which at the establishment of the Union an appeal might have been made from the Supreme Court of any of the Colonies or from the High Court of the Orange River Colony to the King in Council the appeal shall be made only to the Appellate Division. Provided that the right of appeal in any civil suit shall not be limited by reason only of the value of the matter in dispute or the amount claimed or awarded in such suit.

105 (1) In every case civil or criminal in which at the establishment of the Union an appeal might have been made from a court of resident magistrate or other inferior court to a superior court in any of the Colonies the appeal shall be made to the corresponding division of the Supreme Court of South Africa but there shall be no further appeal against any judgment given on appeal by such division except to the Appellate Division and then only if such corresponding division shall have given special leave to appeal. Provided that if such corresponding division shall have refused special leave to appeal the Appellate Division may on application being made thereto grant such special leave and may vary any order as to costs made by such corresponding division in refusing such special leave.

(2) If any court grants special leave to appeal under the provisions of sub section (1) the court may order the appellant to find security for the costs of appeal in such an amount as may be fixed by such court and may fix the time within which such security shall be found.

106 There shall be no appeal from the Supreme Court of South Africa or from any division thereof to the King in Council.

but nothing herein contained shall be construed to impair any right which the King in Council may be pleased to exercise to grant special leave to appeal from the Appellate Division to the King in Council. Parliament may make laws limiting the matters in respect of which such special leave may be asked, but bills containing any such limitation shall be reserved by the Governor-General for the signification of His Majesty's pleasure: Provided that nothing in this section shall affect any right of appeal to His Majesty in Council from any judgment given by the Appellate Division of the Supreme Court under or in virtue of "The Colonial Courts of Admiralty Act, 1890."<sup>(1)</sup>

107. The Chief Justice of South Africa and the judges of appeal may, subject to the approval of the Governor-General in Council, make rules for the conduct of the proceedings of the Appellate Division and prescribing the time and manner of making appeals thereto. Until such rules shall have been promulgated, the rules in force in the Supreme Court of the Cape of Good Hope at the establishment of the Union shall, *mutatis mutandis*, apply.

108. The Chief Justice and other judges of the Supreme Court of South Africa may, subject to the approval of the Governor-General in Council, frame rules for the conduct of the proceedings of the several provincial and local divisions. Until such rules shall have been promulgated, the rules in force at the establishment of the Union in the respective courts which become divisions of the Supreme Court of South Africa shall continue to apply therein.

109. The Appellate Division shall sit in Bloemfontein, but may from time to time for the convenience of suitors hold its sittings at other places within the Union.

110. (1) On the hearing of an appeal from a court consisting of a single judge, three judges of the Appellate Division shall form a quorum; and on the hearing of an appeal from a court consisting of two or more judges, four judges of the Appellate Division shall form a quorum:

Provided that if four judges of the Appellate Division sit to hear an appeal and are equally divided as to any judgment or order, or part thereof, to be given on appeal, any part of the judgment or order of the court from which the appeal is made, in respect whereof such judges are so divided, shall stand and shall be deemed to be the judgment or order of the Appellate Division:

Provided, further, that the costs arising out of any matter in respect whereof such judges are so divided shall be awarded to the party in whose favour such matter was decided by the court from which the appeal is made, subject to the power of such judges, or three of them, to make any other order as to the costs which they may deem equitable.

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(1) *State Papers*, Vol. LXXXII, page 672.

(2) If after argument on an appeal has been heard a judge who sat at the hearing dies or retires, or becomes otherwise incapable of acting before judgment has been given on the appeal, then—

(a) if the argument was heard before three judges, the judgments of the two remaining judges if in agreement, or

(b) if the argument was heard before four judges, the judgments of the three remaining judges if in agreement, or

(c) if the argument was heard before five judges, the judgments of the four remaining judges if in agreement, or of any three of them which are in agreement,

shall be the judgment of the court

(3) No judge shall sit in the hearing of an appeal against a judgment or order given in a case which was heard before him

111 The process of the Appellate Division shall run throughout the Union, and all its judgments or orders shall have full force and effect in every Province, and shall be executed in like manner as if they were original judgments or orders of the provincial division of the Supreme Court of South Africa in such Province

112 The registrar of every provincial division of the Supreme Court of South Africa, if thereto requested by any party in whose favour any judgment or order has been given or made by any other division, shall, upon the deposit with him of an authenticated copy of such judgment or order and on proof that the same remains unsatisfied, issue a writ or other process for the execution of such judgment or order, and thereupon such writ or other process shall be executed in like manner as if it had been originally issued from the division of which he is registrar

113 Any provincial or local division of the Supreme Court of South Africa to which it may be made to appear that any civil suit *pending therein* may be more conveniently or fitly heard or determined in another division may order the same to be removed to such other division, and thereupon such last-mentioned division may proceed with such suit in like manner as if it had been originally commenced therein

114 The Governor-General in Council may appoint a registrar of the Appellate Division and such other officers thereof as shall be required for the proper despatch of the business thereof

115 (1) The laws regulating the admission of advocates and attorneys to practise before any superior court of any of the Colonies shall, *mutatis mutandis* apply to the admission of advocates and attorneys to practise in the corresponding division of the Supreme Court of South Africa

(2) All advocates and attorneys entitled at the establishment of the Union to practise in any superior court of any of the Colonies

shall be entitled to practise as such in the corresponding division of the Supreme Court of South Africa.

(3) All advocates and attorneys entitled to practise before any provisional division of the Supreme Court of South Africa shall be entitled to practise before the Appellate Division.

116. All suits, civil or criminal, pending in any superior court of any of the Colonies at the establishment of the Union shall stand removed to the corresponding division of the Supreme Court of South Africa, which shall have jurisdiction to hear and determine the same, and all judgments and orders of any superior court of any of the Colonies given or made before the establishment of the Union shall have the same force and effect as if they had been given or made by the corresponding division of the Supreme Court of South Africa. All appeals to the King in Council which shall be pending at the establishment of the Union shall be proceeded with as if this Act had not been passed.

## VII.—FINANCE AND RAILWAYS

117. All revenues, from whatever source arising, over which the several Colonies have at the establishment of the Union power of appropriation, shall vest in the Governor-General in Council. There shall be formed a Railway and Harbour Fund, into which shall be paid all revenues raised or received by the Governor-General in Council from the administration of the railways, ports, and harbours, and such fund shall be appropriated by Parliament to the purposes of the railways, ports, and harbours in the manner prescribed by this Act. There shall also be formed a Consolidated Revenue Fund, into which shall be paid all other revenues raised or received by the Governor-General in Council, and such fund shall be appropriated by Parliament for the purposes of the Union in the manner prescribed by this Act, and subject to the charges imposed thereby.

118. The Governor-General in Council shall, as soon as may be after the establishment of the Union, appoint a commission, consisting of one representative from each Province, and presided over by an officer from the Imperial service, to institute an inquiry into the financial relations which should exist between the Union and the Provinces. Pending the completion of that inquiry and until Parliament otherwise provides, there shall be paid annually out of the Consolidated Revenue Fund to the Administrator of each Province—

(a) an amount equal to the sum provided in the estimates for education, other than higher education, in respect of the financial year, 1908-9, as voted by the Legislature of the corresponding Colony during the year 1908 ;

(b) such further sums as the Governor-General in Council

may consider necessary for the due performance of the services and duties assigned to the Provinces respectively

Until such inquiry shall be completed and Parliament shall have *made other provision*, the *Executive Committees* in the several Provinces shall annually submit estimates of their expenditure for the approval of the Governor-General in Council, and no expenditure shall be incurred by any Executive Committee which is not provided for in such approved estimates

119 The annual interest of the public debts of the Colonies and any sinking funds constituted by law at the establishment of the Union shall form a first charge on the Consolidated Revenue Fund

120 No money shall be withdrawn from the Consolidated Revenue Fund or the Railway and Harbour Fund except under appropriation made by law. But, until the expiration of 2 months after the first meeting of Parliament, the Governor-General in Council may draw therefrom and expend such moneys as may be necessary for the public service, and for railway and harbour administration respectively

121 All stocks, cash, bankers' balances, and securities for money belonging to each of the Colonies at the establishment of the Union shall be the property of the Union. Provided that the balances of any funds raised at the establishment of the Union by law for any special purposes in any of the Colonies shall be deemed to have been appropriated by Parliament for the special purposes for which they have been provided

122 Crown lands, public works, and all property throughout the Union, movable or immovable, and all rights of whatever description belonging to the several Colonies at the establishment of the Union, shall vest in the Governor-General in Council subject to any debt or liability specially charged thereon

123 All rights in and to mines and minerals and all rights in *connection with the searching for working for or disposing of* minerals or precious stones, which at the establishment of the Union are vested in the Government of any of the Colonies, shall on such establishment vest in the Governor-General in Council

124 The Union shall assume all debts and liabilities of the Colonies existing at its establishment, subject, notwithstanding any other provision contained in this Act, to the conditions imposed by any law under which such debts or liabilities were raised or incurred, and without prejudice to any rights of security or priority in respect of the payment of principal, interest, sinking fund and other charges conferred on the creditors of any of the Colonies, and may, subject to such conditions and rights, convert, renew, or consolidate such debts.

125. All ports, harbours, and railways belonging to the several Colonies at the establishment of the Union shall from the date thereof vest in the Governor-General in Council. No railway for the conveyance of public traffic, and no port, harbour, or similar work, shall be constructed without the sanction of Parliament.

126. Subject to the authority of the Governor-General in Council, the control and management of the railways, ports, and harbours of the Union shall be exercised through a Board consisting of not more than three commissioners, who shall be appointed by the Governor-General in Council, and a Minister of State, who shall be chairman. Each commissioner shall hold office for a period of 5 years, but may be re-appointed. He shall not be removed before the expiration of his period of appointment, except by the Governor-General in Council for cause assigned, which shall be communicated by message to both Houses of Parliament, within one week after the removal, if Parliament be then sitting, or, if Parliament be not sitting, then within one week after the commencement of the next ensuing session. The salaries of the commissioners shall be fixed by Parliament and shall not be reduced during their respective terms of office.

127. The railways, ports, and harbours of the Union shall be administered on business principles, due regard being had to agricultural and industrial development within the Union and promotion, by means of cheap transport, of the settlement of an agricultural and industrial population in the inland portions of all Provinces of the Union. So far as may be, the total earnings shall be not more than are sufficient to meet the necessary outlays for working, maintenance, betterment, depreciation, and the payment of interest due on capital not being capital contributed out of railway or harbour revenue, and not including any sums payable out of the Consolidated Revenue Fund in accordance with the provisions of sections 130 and 131. The amount of interest due on such capital invested shall be paid over from the Railway and Harbour Fund into the Consolidated Revenue Fund. The Governor-General in Council shall give effect to the provisions of this section as soon as and at such time as the necessary administrative and financial arrangements can be made, but in any case shall give full effect to them before the expiration of 4 years from the establishment of the Union. During such period, if the revenues accruing to the Consolidated Revenue Fund are insufficient to provide for the general service of the Union, and if the earnings accruing to the Railway and Harbour Fund are in excess of the outlays specified herein, Parliament may by law appropriate such excess or any part thereof towards the general expenditure of the Union, and all sums so appropriated shall be paid over to the Consolidated Revenue Fund.

128. Notwithstanding anything to the contrary in the last preceding section, the Board may establish a fund out of railway and harbour



revenue to be used for maintaining, as far as may be, uniformity of rates notwithstanding fluctuations in traffic

129 All balances standing to the credit of any fund established in any of the Colonies for railway or harbour purposes at the establishment of the Union shall be under the sole control and management of the Board, and shall be deemed to have been appropriated by Parliament for the respective purposes for which they have been provided

130 Every proposal for the construction of any port or harbour works or of any line of railway, before being submitted to Parliament, shall be considered by the Board, which shall report thereon, and shall advise whether the proposed works or line of railway should or should not be constructed. If any such works or line shall be constructed contrary to the advice of the Board, and if the Board is of opinion that the revenue derived from the operation of such works or line will be insufficient to meet the costs of working and maintenance, and of interest on the capital invested therein, it shall frame an estimate of the annual loss which, in its opinion, will result from such operation. Such estimate shall be examined by the Controller and Auditor-General, and when approved by him the amount thereof shall be paid over annually from the Consolidated Revenue Fund to the Railway and Harbour Fund. Provided that, if in any year the actual loss incurred, as calculated by the Board and certified by the Controller and Auditor-General, is less than the estimate framed by the Board, the amount paid over in respect of that year shall be reduced accordingly so as not to exceed the actual loss incurred. In calculating the loss arising from the operation of any such work or line, the Board shall have regard to the value of any contributions of traffic to other parts of the system which may be due to the operation of such work or line

131 If the Board shall be required by the Governor General in Council or under any Act of Parliament or resolution of both Houses of Parliament to provide any services or facilities either gratuitously or at a rate of charge which is insufficient to meet the costs involved in the provision of such services or facilities, the Board shall at the end of each financial year present to Parliament an account approved by the Controller and Auditor-General, showing, as nearly as can be ascertained, the amount of the loss incurred by reason of the provision of such services and facilities, and such amount shall be paid out of the Consolidated Revenue Fund to the Railway and Harbour Fund

132. [Repealed]

133 In order to compensate Pietermaritzburg and Bloemfontein for any loss sustained by them in the form of diminution of prosperity or decreased rateable value by reason of their ceasing to be the seats of government of their respective Colonies, there shall be paid

from the Consolidated Revenue Fund for a period not exceeding 25 years to the municipal councils of such towns a grant of 2 per cent. per annum on their municipal debts, as existing on the 31st day of January, 1909, and as ascertained by the Controller and Auditor-General. The commission appointed under section 118 shall, after due inquiry, report to the Governor-General in Council what compensation should be paid to the municipal councils of Cape Town and Pretoria for the losses, if any, similarly sustained by them. Such compensation shall be paid out of the Consolidated Revenue Fund for a period not exceeding 25 years, and shall not exceed 1 per cent. per annum on the respective municipal debts of such towns as existing on the 31st January, 1909, and as ascertained by the Controller and Auditor-General. For the purposes of this section Cape Town shall be deemed to include the municipalities of Cape Town, Green Point, and Sea Point, Woodstock, Mowbray, and Rondebosch, Claremont, and Wynberg, and any grant made to Cape Town shall be payable to the councils of such municipalities in proportion to their respective debts. One half of any such grants shall be applied to the redemption of the municipal debts of such towns respectively. At any time after the tenth annual grant has been paid to any of such towns the Governor-General in Council, with the approval of Parliament, may after due inquiry withdraw or reduce the grant to such town.

#### VIII.—GENERAL

134. The election of senators and of members of the Executive Committees of the Provincial Councils as provided in this Act shall, whenever such election is contested, be according to the principle of proportional representation, each voter having one transferable vote. *The Governor-General in Council, or, in the case of the first election of the Senate, the Governor in Council of each of the Colonies,* shall frame regulations prescribing the method of voting and of transferring and counting votes and the duties of returning officers in connection therewith, and such regulations or any amendments thereof after being duly promulgated shall have full force and effect unless and until Parliament shall otherwise provide.

135. Subject to the provisions of this Act, all laws in force in the several Colonies at the establishment of the Union shall continue in force in the respective Provinces until repealed or amended by Parliament, or by the Provincial Councils in matters in respect of which the power to make ordinances is reserved or delegated to them. All legal commissions in the several Colonies at the establishment of the Union shall continue as if the Union had not been established.

136. There shall be free trade throughout the Union, but until Parliament otherwise provides the duties of custom and of excise leviable under the laws existing in any of the Colonies at the establishment of the Union shall remain in force.

137 Both the English and Dutch<sup>(1)</sup> languages shall be official languages of the Union, and shall be treated on a footing of equality, and possess and enjoy equal freedom, rights, and privileges, all records, journals, and proceedings of Parliament shall be kept in both languages, and all bills, Acts, and notices of general public importance or interest issued by the Government of the Union shall be in both languages

138 All persons who have been naturalised in any of the Colonies shall be deemed to be naturalised throughout the Union

139 The administration of justice throughout the Union shall be under the control of a Minister of State, in whom shall be vested all powers, authorities, and functions which shall at the establishment of the Union be vested in the Attorneys-General of the Colonies

140 Subject to the provisions of the next succeeding section, all officers of the public service of the Colonies shall at the establishment of the Union become officers of the Union

141 (1) As soon as possible after the establishment of the Union, the Governor-General in Council shall appoint a Public Service Commission to make recommendations for such reorganisation and readjustment of the departments of the public service as may be necessary. The Commission shall also make recommendations in regard to the assignment of officers to the several Provinces

(2) The Governor-General in Council may after such Commission has reported assign from time to time to each Province such officers as may be necessary for the proper discharge of the services reserved or delegated to it, and such officers on being so assigned shall become officers of the Province. Pending the assignment of such officers, the Governor-General in Council may place at the disposal of the Provinces the services of such officers of the Union as may be necessary

(3) The provisions of this section shall not apply to any service or department under the control of the Railway and Harbour Board, or to any person holding office under the Board

142 After the establishment of the Union the Governor-General in Council shall appoint a permanent Public Service Commission with such powers and duties relating to the appointment, discipline, retirement, and superannuation of public officers as Parliament shall determine

143 Any officer of the public service of any of the Colonies at the establishment of the Union who is not retained in the service of the Union or assigned to that of a Province shall be entitled to

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(1) By "The Official Languages of the Union Act 1925," of the Union the word "Dutch" was declared to include Afrikaans wherever it occurs in the present Act

receive such pension, gratuity, or other compensation as he would have received in like circumstances if the Union had not been established.

144. Any officer of the public service of any of the Colonies at the establishment of the Union who is retained in the service of the Union or assigned to that of a Province shall retain all his existing and accruing rights, and shall be entitled to retire from the service at the time at which he would have been entitled by law to retire, and on the pension or retiring allowance to which he would have been entitled by law in like circumstances if the Union had not been established.

145. The services of officers in the public service of any of the Colonies at the establishment of the Union shall not be dispensed with by reason of their want of knowledge of either the English or Dutch language.

146. Any permanent officer of the Legislature of any of the Colonies who is not retained in the service of the Union, or assigned to that of any Province, and for whom no provision shall have been made by such Legislature, shall be entitled to such pension, gratuity, or compensation as Parliament may determine.

147. The control and administration of native affairs and of matters specially or differentially affecting Asiatics throughout the Union shall vest in the Governor-General in Council, who shall exercise all special powers in regard to native administration hitherto vested in the Governors of the Colonies or exercised by them as supreme chiefs, and any lands vested in the Governor or Governor and Executive Council of any Colony for the purpose of reserves for native locations shall vest in the Governor-General in Council, who shall exercise all special powers in relation to such reserves as may hitherto have been exercisable by any such Governor or Governor and Executive Council, and no lands set aside for the occupation of natives which cannot at the establishment of the Union be alienated except by an Act of the colonial Legislature shall be alienated or in any way diverted from the purposes for which they are set apart except under the authority of an Act of Parliament.

148. (1) All rights and obligations under any conventions or agreements which are binding on any of the Colonies shall devolve upon the Union at its establishment.

(2) The provisions of the railway agreement between the Governments of the Transvaal, the Cape of Good Hope, and Natal, dated the 2nd of February, 1909, shall, as far as practicable, be given effect to by the Government of the Union.

## IX—NEW PROVINCES AND TERRITORIES

149 Parliament shall not—

(a) Alter the boundaries of any Province, divide a Province into two or more Provinces, or form a new Province out of Provinces within the Union, except on the petition of the Provincial Council of every Province whose boundaries are affected thereby

(b) Abolish any Provincial Council or abridge the powers conferred on Provincial Councils under section 85, except by petition to Parliament by the Provincial Council

150 The King with the advice of the Privy Council, may on addresses from the Houses of Parliament of the Union admit into the Union the territories administered by the British South Africa Company on such terms and conditions as to representation and otherwise in each case as are expressed in the addresses and approved by the King, and the provisions of any Order in Council in that behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland

151 The King with the advice of the Privy Council, may, on addresses from the Houses of Parliament of the Union, transfer to the Union the government of any territories, other than the territories administered by the British South Africa Company, belonging to or under the protection of His Majesty, and inhabited wholly or in part by natives, and upon such transfer the Governor-General in Council may undertake the government of such territory upon the terms and conditions embodied in the schedule to this Act

## X—AMENDMENT OF ACT

152 Parliament may by law repeal or alter any of the provisions of this Act. Provided that no provision thereof, for the operation of which a definite period of time is prescribed, shall during such period be repealed or altered. And provided further that no repeal or alteration of the provisions contained in this section or in sections 33 and 34 (until the number of members of the House of Assembly has reached the limit therein prescribed, or until a period of 10 years has elapsed after the establishment of the Union, whichever is the longer period), or in sections 35 and 137, shall be valid unless the bill embodying such repeal or alteration shall be passed by both Houses of Parliament sitting together, and at the third reading be agreed to by not less than two-thirds of the total number of members of both Houses. A bill so passed at such joint sitting shall be taken to have been duly passed by both Houses of Parliament.

## XI.—SUPPLEMENTARY

153. This Act may be cited as "The South Africa Act, 1909."

## SCHEDULE

1. After the transfer of the government of any territory belonging to or under the protection of His Majesty, the Governor-General in Council shall be the legislative authority, and may by proclamation make laws for the peace, order, and good government of such territory: Provided that all such laws shall be laid before both Houses of Parliament within 7 days after the issue of the proclamation or, if Parliament be not then sitting, within 7 days after the beginning of the next session, and shall be effectual unless and until both Houses of Parliament shall by resolutions passed in the same session request the Governor-General in Council to repeal the same, in which case they shall be repealed by proclamation.

2. The Prime Minister shall be charged with the administration of any territory thus transferred, and he shall be advised in the general conduct of such administration by a Commission consisting of not fewer than three members with a secretary, to be appointed by the Governor-General in Council, who shall take the instructions of the Prime Minister in conducting all correspondence relating to the territories, and shall also under the like control have custody of all official papers relating to the territories.

3. The members of the Commission shall be appointed by the Governor-General in Council, and shall be entitled to hold office for a period of 10 years, but such period may be extended to successive further terms of 5 years. They shall each be entitled to a fixed annual salary, which shall not be reduced during the continuance of their term of office, and they shall not be removed from office except upon addresses from both Houses of Parliament passed in the same session praying for such removal. They shall not be qualified to become, or to be, members of either House of Parliament. One of the members of the Commission shall be appointed by the Governor-General in Council as vice-chairman thereof. In case of the absence, illness, or other incapacity of any member of the commission, the Governor-General in Council may appoint some other fit and proper person to act during such absence, illness, or other incapacity.

4. It shall be the duty of the members of the Commission to advise the Prime Minister upon all matters relating to the general conduct of the administration of, or the legislation for, the said territories. The Prime Minister, or another Minister of State nominated by the Prime Minister to be his deputy for a fixed period, or, failing such nomination, the vice-chairman, shall preside at all meetings of the Commission, and in case of an equality of votes shall have a casting vote. Two members of the commission shall form a quorum. In case the Commission shall consist of four or more members, three of them shall form a quorum.

5 Any member of the Commission who dissents from the decision of a majority shall be entitled to have the reasons for his dissent recorded in the minutes of the Commission

6 The members of the Commission shall have access to all official papers concerning the territories, and they may deliberate on any matter relating thereto and tender their advice thereon to the Prime Minister

7 Before coming to a decision on any matter relating either to the administration, other than routine, of the territories or to legislation therefor, the Prime Minister shall cause the papers relating to such matter to be deposited with the secretary to the Commission, and shall convene a meeting of the Commission for the purpose of obtaining its opinion on such matter

8 Where it appears to the Prime Minister that the despatch of any communication or the making of any order is urgently required, the communication may be sent or order made, although it has not been submitted to a meeting of the Commission or deposited for the perusal of the members thereof. In any such case the Prime Minister shall record the reasons for sending the communication or making the order and give notice thereof to every member

9 If the Prime Minister does not accept a recommendation of the Commission or proposes to take some action contrary to their advice, he shall state his views to the Commission, who shall be at liberty to place on record the reasons in support of their recommendation or advice. This record shall be laid by the Prime Minister before the Governor General in Council, whose decision in the matter shall be final

10 When the recommendations of the Commission have not been accepted by the Governor-General in Council, or action not in accordance with their advice has been taken by the Governor-General in Council the Prime Minister, if thereto requested by the Commission, shall lay the record of their dissent from the decision or action taken and of the reasons therefor before both Houses of Parliament, unless in any case the Governor General in Council shall transmit to the Commission a minute recording his opinion that the publication of such record and reasons would be gravely detrimental to the public interest

11 The Governor General in Council shall appoint a Resident Commissioner for each territory, who shall, in addition to such other duties as shall be imposed on him, prepare the annual estimates of revenue and expenditure for such territory, and forward the same to the secretary to the Commission for the consideration of the Commission and of the Prime Minister. A proclamation shall be issued by the Governor General in Council, giving to the provisions for revenue and expenditure made in the estimates as finally approved by the Governor-General in Council the force of law

12. There shall be paid into the Treasury of the Union all duties of customs levied on dutiable articles imported into and consumed in the territories, and there shall be paid out of the Treasury annually towards the cost of administration of each territory a sum in respect of such duties which shall bear to the total customs revenue of the Union in respect of each financial year the same proportion as the average amount of the customs revenue of such territory for the 3 completed financial years last preceding the taking effect of this Act bore to the average amount of the whole customs revenue for all the Colonies and territories included in the Union received during the same period.

13. If the revenue of any territory for any financial year shall be insufficient to meet the expenditure thereof, any amount required to make good the deficiency may, with the approval of the Governor-General in Council, and on such terms and conditions and in such manner as with the like approval may be directed or prescribed, be advanced from the funds of any other territory. In default of any such arrangement, the amount required to make good any such deficiency shall be advanced by the Government of the Union. In case there shall be a surplus for any territory, such surplus shall in the first instance be devoted to the repayment of any sums previously advanced by any other territory or by the Union Government to make good any deficiency in the revenue of such territory.

14. It shall not be lawful to alienate any land in Basutoland or any land forming part of the native reserves in the Bechuanaland Protectorate and Swaziland from the native tribes inhabiting those territories.

15. The sale of intoxicating liquor to natives shall be prohibited in the territories, and no provision giving facilities for introducing, obtaining, or possessing such liquor in any part of the territories less stringent than those existing at the time of transfer shall be allowed.

16. The custom, where it exists, of holding pitsos or other recognised forms of native assembly shall be maintained in the territories.

17. No differential duties or imposts on the produce of the territories shall be levied. The laws of the Union relating to customs and excise shall be made to apply to the territories.

18. There shall be free intercourse for the inhabitants of the territories with the rest of South Africa subject to the laws, including the pass laws, of the Union.

19. Subject to the provisions of this schedule, all revenues derived from any territory shall be expended for and on behalf of such territory: Provided that the Governor-General in Council may make special provision for the appropriation of a portion of such revenue as a contribution towards the cost of defence and other services performed by the Union for the benefit of the whole of South Africa,



so, however, that that contribution shall not bear a higher proportion to the total cost of such services than that which the amount payable under paragraph 12 of this schedule from the Treasury of the Union towards the cost of the administration of the territory bears to the total customs revenue of the Union on the average of the 3 years immediately preceding the year for which the contribution is made

20 The King may disallow any law made by the Governor General in Council by proclamation for any territory within one year from the date of the proclamation, and such disallowance on being made known by the Governor-General by proclamation shall annul the law from the day when the disallowance is so made known

21 The members of the Commission shall be entitled to such pensions or superannuation allowances as the Governor General in Council shall by proclamation provide, and the salaries and pensions of such members and all other expenses of the Commission shall be borne by the territories in the proportion of their respective revenues

22 The rights as existing at the date of transfer of officers of the public service employed in any territory shall remain in force

23 Where any appeal may by law be made to the King in Council from any court of the territories, such appeal shall, subject to the provisions of this Act, be made to the Appellate Division of the Supreme Court of South Africa

24 The Commission shall prepare an annual report on the territories which shall when approved by the Governor General in Council be laid before both Houses of Parliament

25 All bills to amend or alter the provisions of this schedule shall be reserved for the signification of His Majesty's pleasure

## 2 Senate Act, 1926 <sup>(1)</sup>

[No 54 — June 9 1926]

*Be it enacted by the King's most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows —*

1 Notwithstanding anything contained in sections 20, 24 and 25 of The South Africa Act, 1909, <sup>(2)</sup> or in any other law—

(a) the Governor General may within 120 days of any dissolution of the House of Assembly dissolve the Senate,

(b) upon any dissolution of the Senate, whether under section 20 of 'The South Africa Act, 1909,' or in terms of paragraph (a) of this section—

(i) those members of the Senate who were nominated by the Governor General shall vacate their seats,

<sup>(1)</sup> Also in the Afrikaans language

<sup>(2)</sup> Page 141

(ii) the persons nominated to fill the seats so vacated shall, subject to the provisions of "The South Africa Act, 1909," or of any other law, hold their seats for a period of 10 years from the date of their nomination or until the next succeeding dissolution of the Senate or until a change of Government has occurred, whichever be the shortest period.

A change of Government shall be considered to have occurred whenever another person than the Prime Minister for the time being becomes Prime Minister and when the Governor-General has published a notice in the *Gazette* that such change of Government has occurred.

2. This Act may be cited as "The Senate Act, 1926."

### 3. Status of the Union Act, 1934.<sup>(1)</sup>

[No. 69.—June 22, 1934.]

*Whereas the delegates of His Majesty's Governments in the United Kingdom, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland, at Imperial Conferences holden at Westminster in the years of our Lord 1926 and 1930, did concur in making the declarations and resolutions set forth in the reports of the said Conferences, and more particularly in defining the group of self-governing communities composed of Great Britain and the Dominions as "autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown and freely associated as members of the British Commonwealth of Nations";*

*And whereas the said resolutions and declarations in so far as they required legislative sanction on the part of the United Kingdom have been ratified, confirmed and established by the Parliament of the United Kingdom in an Act entitled "The Statute of Westminster, 1931" (22 Geo. V, c. 4);<sup>(2)</sup>*

*And whereas it is expedient that the status of the Union of South Africa as a sovereign independent State as hereinbefore defined shall be adopted and declared by the Parliament of the Union and that "The South Africa Act, 1909" (9 Edw. VII, c. 9),<sup>(3)</sup> be amended accordingly;*

*And whereas it is expedient that the said Statute of Westminster, in so far as its provisions are applicable to the Union of South Africa, and an Afrikaans version thereof, shall be adopted as an Act of the Parliament of the Union of South Africa;*

*Now, therefore, be it declared and enacted by the King's most*

(<sup>1</sup>) Also in the Afrikaans language.

(<sup>2</sup>) Page 1.

(<sup>3</sup>) Page 141.

*Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows —*

1 In this Act the expression " The South Africa Act " means " The South Africa Act, 1909 " (9 Edw VII, c 9), as amended from time to time.

2 The Parliament of the Union shall be the sovereign legislative power in and over the Union, and notwithstanding anything in any other law contained, no Act of the Parliament of the United Kingdom and Northern Ireland passed after the 11th day of December, 1931, shall extend, or be deemed to extend, to the Union as part of the law of the Union, unless extended thereto by an Act of the Parliament of the Union

3 The parts of " The Statute of Westminster, 1931 " (22 Geo V, c 4), and the Afrikaans version thereof, set forth in the schedule to this Act, shall be deemed to be an Act of the Parliament of the Union and shall be construed accordingly

4 (1) The Executive Government of the Union in regard to any aspect of its domestic or external affairs is vested in the King, acting on the advice of his Ministers of State for the Union, and may be administered by His Majesty in person or by a Governor-General as his representative

(2) Save where otherwise expressly stated or necessarily implied, any reference in " The South Africa Act " and in this Act to the King shall be deemed to be a reference to the King acting on the advice of his Ministers of State for the Union

(3) The provisions of sub sections (1) and (2) shall not be taken to affect the provisions of sections 12, 14, 20 and 45 of " The South Africa Act " and the constitutional conventions relating to the exercise of his functions by the Governor-General under the said sections

\* \* \*

10 Nothing in this Act contained shall affect the provisions of section 106 of ' The South Africa Act,' relating to an appeal to the King in Council, or the provisions of sections 150 and 151 of the said Act

#### SCHEDULE — STATUTE OF WESTMINSTER, 1931

[The text is identical with that of " The Statute of Westminster " passed by the United Kingdom Parliament (see page 1), with the following exceptions —

(1) Section 1 reads

" In this Act the expression ' Dominion ' means the Union of South Africa "

(2) Sections 7-10 are omitted

(3) In section 11 the words " or State " are omitted ]

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#### 4. Royal Executive Functions and Seals Act, 1934.<sup>(1)</sup> [No. 70.—June 22, 1934.]

*Be it enacted by the King's most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—*

1. (1) There shall be a Royal Great Seal of the Union hereinafter referred to as "the Great Seal," which shall show on the obverse the effigy of the Sovereign, with his full titles as circumscription and on the reverse the coat of arms of the Union with supporters and the inscription "Unie van Suid-Afrika" and "Union of South Africa."

(2) There shall be a Royal Signet (hereinafter referred to as "the Signet") showing the reverse of the Great Seal with the Tudor Crown for crest and the King's full title in Latin on the outer rim and the words "Unie van Suid-Afrika—Union of South Africa" on the inner rim.

(3) The Great Seal and Signet shall be of a design and size approved of by the King and the Great Seal shall show the effigy of the Sovereign in such manner and of such design as His Majesty may be pleased to approve.

2. In the case of a change in the person of the Sovereign the then existing Seals shall be used until such time as new Seals have been struck and put into use.

3. The Prime Minister of the Union or, in his absence, his deputy shall be the Keeper of the Great Seal and the Signet.

4. (1) The King's will and pleasure as Head of the Executive Government of the Union shall be expressed in writing under his Sign Manual, and every such instrument shall be countersigned by one of the King's Ministers for the Union.

(2) The King's Sign Manual shall furthermore be confirmed by the Great Seal on all royal proclamations and he may, by proclamation, prescribe from time to time which other public instruments bearing his Sign Manual shall pass either the Great Seal or the Signet.

(3) The Keeper of the Seals shall affix either the Great Seal or the Signet, as the case may be, to any instrument bearing the King's Sign Manual and the countersignature of one of His Majesty's Ministers of State for the Union and required to pass either the Great Seal or the Signet.

(4) The provisions of this section shall not affect the exercise of the powers under sections 12, 14, 20 and 25 of "The South Africa Act, 1909,"<sup>(2)</sup> by the King or the Governor-General.

5. (1) The Governor-General in Council may by regulation provide for the making of wafer seals, representing the Great Seal, of such material as he may deem suitable and prescribe the size of the cast to be used for that purpose.

<sup>(1)</sup> Also in the Afrikaans language.

<sup>(2)</sup> Page 141.

(2) The wafer seals made in pursuance of the provisions of sub section (1) shall be kept by the Keeper of the Great Seal and may be used by him for sealing instruments which are required to pass the Great Seal, and instruments to which such wafer seals have been affixed shall be deemed to be sufficiently sealed in terms of this Act

6 (1) Whenever for any reason the King's signature to any instrument requiring the King's Sign Manual cannot be obtained or whenever the delay involved in obtaining the King's signature to any such instrument in the ordinary course would, in the opinion of the Governor-General in Council either frustrate the object thereof, or unduly retard the despatch of public business, the Governor-General shall subject to such instructions as may, from time to time, in that behalf, be given by the King on the advice of his Ministers of State for the Union execute and sign such instrument on behalf of His Majesty and an instrument so executed and signed by the Governor-General and countersigned by one of the King's Ministers of the Union shall be of the same force and effect as an instrument signed by the King

(2) The Governor-General's signature on such an instrument shall be confirmed by his Great Seal of the Union and a resolution of the Governor-General in Council shall be the necessary authority for affixing the same

7 In the absence of any Act of the Parliament of the Union providing otherwise the powers of the King to be exercised by His Majesty in Council or by Order in Council, under Acts of the Parliament of the United Kingdom passed prior to the commencement of "The Statute of Westminster, 1931,"<sup>(1)</sup> and extending to the Union as part of the law of the Union shall, in respect of the Union, after the commencement of this Act, be exercised respectively by the Governor General in Council or by him by proclamation in the *Gazette* unless the Governor-General in Council decide that the exigencies of the case require that the procedure prescribed by such Acts be followed. Provided that the King in Council shall in the latter case act or purport to act in respect of the Union only at the request of the Prime Minister of the Union duly conveyed and it be expressly declared in the instrument containing the King's pleasure that the Union has requested and consented to the King in Council so acting in respect of the Union

8 The powers vested in, or duties imposed on, the Lord Chancellor, a Secretary of State, a Commissioner of the Treasury, the Treasury, the Admiralty, the Board of Trade, or any other functionary or authority of the United Kingdom under any Act of the Parliament of the United Kingdom referred to in section 7, or under any rule, order or regulation framed thereunder shall after the

commencement of this Act, in respect of the Union, be vested in or performed by such Minister, Department of State, functionary or authority in the Union as the Governor-General in Council may by proclamation in the *Gazette* designate.

9. Sections 7 and 8 shall not apply to appeals to the King in Council under the provisions of section 106 of "The South Africa Act, 1909."

10. This Act shall be known as "The Royal Executive Functions and Seals Act, 1934," and shall come into operation on a date<sup>(1)</sup> to be fixed by the Governor-General by proclamation in the *Gazette*.

## 5. Letters Patent, 1937.

*George VI, by the Grace of God of Great Britain, Ireland and the British dominions beyond the Seas King, Defender of the Faith, Emperor of India; Acting on the advice of our Ministers of State for the Union of South Africa.*

*To all to whom these presents shall come, Greeting!*

*Whereas by an Act of Parliament of the United Kingdom of Great Britain and Ireland, passed on the 20th day of September, 1909,<sup>(2)</sup> in the 9th year of the reign of His late Majesty King Edward VII, intituled: "An Act to constitute the Union of South Africa", it was enacted that it should be lawful for the King, with the advice of His Majesty's Privy Council, to declare by proclamation that, on and after a day therein appointed, not later than one year after the passing of that Act, the Colonies of the Cape of Good Hope, Natal, the Transvaal, and the Orange River Colony (hereinafter called "the Colonies"), should be united in a legislative union under one Government under the name of "the Union of South Africa", and that on and after the day appointed by such proclamation the Government and Parliament of the Union should have full power and authority within the limits of the Colonies, but that the King might at any time after the proclamation appoint a Governor-General for the Union;*

*And whereas His late Majesty King Edward VII did on the 2nd day of December, 1909,<sup>(3)</sup> with the advice of his Privy Council, declare by proclamation that on and after the 31st day of May, 1910, the Colonies should be united into a legislative union under one Government under the name of "the Union of South Africa";*

*And whereas by the said Act it was further enacted that the Governor-General shall be appointed by the King, and shall have and may exercise in the Union during the King's pleasure, but subject to that Act, such of the King's powers and functions as His Majesty may*

<sup>(1)</sup> The date fixed was December 3, 1934.

<sup>(2)</sup> Page 141.

<sup>(3)</sup> *State Papers*, Vol. CII, page 39.

*be pleased to assign to him, and that the provisions of that Act relating to the Governor General shall extend and apply to the Governor General for the time being or such person as the King may appoint to administer the Government of the Union,*

*And whereas it is deemed desirable to revoke the Letters Patent, passed by His late Majesty King Edward VII, under the Great Seal of the United Kingdom, on the 29th day of December, 1909,<sup>(1)</sup> and relating to the office of the Governor General of our Union of South Africa, and to substitute new provisions therefor,*

*Now know ye that we do by these presents declare our will and pleasure as follows —*

1 The Governor-General of our Union of South Africa (hereinafter called 'the Union') shall be appointed by Commission under our Sign Manual and Signet of the Union of South Africa

And we do hereby authorise and command our said Governor-General to do and execute, in due manner, all things that shall belong to his said office and to the trust we have reposed in him, according to the several powers and authorities granted or appointed him by virtue of 'The South Africa Act, 1909,' or of such other laws as are or shall hereafter be in force in the Union, of these present Letters Patent and of such Commission as may be issued to him under our Sign Manual and Signet of the Union of South Africa, and according to such Instructions as may from time to time be given to him, under our Sign Manual and Signet aforesaid

2 The Governor General may on our behalf exercise all powers under 'The South Africa Act, 1909', or otherwise, in respect of the summoning, proroguing, or dissolving the Parliament of the Union

3 The command in-chief of the naval and military forces vested in us by 'The South Africa Act 1909' is hereby assigned to the Governor-General as our representative

4 The Governor General may, on our behalf, exercise our royal prerogative of mercy

5 There shall be a Great Seal of and for the Union, which the Governor General shall keep and use for sealing all things whatsoever that shall pass his said Great Seal

6 In the event of the death, incapacity, removal or absence from the Union of the Governor General, all the powers and authorities herein granted to him shall, until our further pleasure is signified therein, be vested in such person as may be appointed by us under our Sign Manual and Signet aforesaid to administer the Government of the Union, and in case there shall be no person within the Union so appointed by us, then in the Chief Justice of South Africa for the time being, or in case of the death, removal, incapacity, or absence from the Union of the said Chief Justice, then in the senior judge

<sup>(1)</sup> *Statutory Rules and Orders, 1910, page 864*

of the Supreme Court of South Africa then residing in the Union; and not being under incapacity ;

Provided that no such powers or authorities shall vest in such person until he shall have taken the oaths appointed to be taken by the Governor-General of the Union, and in the manner provided by the Instructions<sup>(1)</sup> accompanying these our Letters Patent ;

And provided further that the senior judge aforesaid shall administer the Government of the Union in lieu of the Chief Justice only until a successor shall have been appointed to a Chief Justice deceased or removed from office, or until the Chief Justice shall no longer be under incapacity or have returned to the Union, and such Chief Justice shall have actually assumed the administration of the Government of the Union.

The temporary absence of the Governor-General from the Union for any period not exceeding 30 days, and for an additional period of 14 days specially sanctioned by us, for the purpose of visiting a neighbouring colony, territory or State shall not be deemed absence from the Union within the meaning of these our Letters Patent, and the Governor-General may continue to exercise all and every the powers vested in him as if he were actually within the Union.

7. Whenever the Governor-General shall be temporarily absent from the Union for a short period, he may, in every such case, by an instrument under his Great Seal of the Union, appoint any person to be his deputy during such temporary absence, and in that capacity to exercise and perform for and on behalf of the Governor-General during such absence, but no longer, all such powers and authorities vested in the Governor-General, as shall in such instrument be specified and limited, but no others. Every such deputy shall conform to and observe all such instructions as the Governor-General shall from time to time address to him for his guidance ; Provided, nevertheless, that by the appointment of a deputy, as aforesaid, the power and authority of the Governor-General shall not be abridged, altered, or in any way affected, otherwise than we may at any time hereafter think proper to direct.

Provided further that, if any such deputy shall have been duly appointed, it shall not be necessary during the continuance in office of such deputy for any person to assume the Government of the Union as administrator thereof.

8. And we do hereby require and command all our Ministers and officers, civil and military, and all other inhabitants of the Union, to be obedient, aiding, and assisting unto the Governor-General, or, in the event of his death, incapacity or absence, to such person as may, from time to time, under the provisions of these our Letters Patent, administer the Government of the Union.

9. And we do hereby reserve to ourselves, our heirs, and successors,



full powers and authority from time to time to revoke, alter, or amend these our Letters Patent as to us or to them shall seem meet  
 10 These our Letters Patent shall be proclaimed in the *Government Gazette* of the Union and shall come into operation on the 1st day of March, 1937, whereupon the Letters Patent passed by His late Majesty King Edward VII, on the 29th day of December, 1909, shall, without prejudice to anything lawfully done thereunder, be revoked

Given under our hand at Westminster, this 15th day of February in the year of our Lord 1937 and in the 1st year of our reign

Countersigned and confirmed by the Royal Great Seal of the Union according to law this 11th day of March in the year of our Lord 1937

J B M HERTZOG

## 6. Royal Instructions, 1937

GEORGE RI

TO OUR GOVERNOR GENERAL OF OUR UNION OF SOUTH AFRICA OR, IN HIS ABSENCE TO THE OFFICER ADMINISTERING THE GOVERNMENT OF THE UNION

*Whereas by certain Letters Patent bearing even date herewith <sup>(1)</sup> we have authorised and commanded the Governor General of our Union of South Africa (hereinafter called 'the Union') to do and execute in due manner all things that shall belong to his said office, and to the trust we have reposed in him according to the several powers and authorities granted or appointed him by virtue of "The South Africa Act, 1909" <sup>(2)</sup> or of such other laws as are or shall hereafter be in force in the Union of the said Letters Patent and of such Commission as may be issued to him under our Sign Manual and Signet of the Union of South Africa and according to such Instructions as may from time to time be given to him, under our Sign Manual and Signet aforesaid,*

*Now therefore, we do by these our Instructions under our Sign Manual and Signet aforesaid declare our pleasure to be as follows —*

1 Every Governor General of the Union shall, with all due solemnity, cause our Commission under our Sign Manual and Signet, appointing him to be Governor General to be read and published in the presence of the Chief Justice of South Africa, or some other judge of the Supreme Court of South Africa, and of such members of the Executive Council for the Union as are able to attend

2 Every Governor General and every other officer appointed to administer the Government of the Union shall take an oath or affirmation of allegiance and an oath or affirmation of office in the following forms —

(1) Page 183

(2) Page 141

*Oaths*

"I . . . , do swear that I will be faithful and bear true allegiance to His (Her) Majesty (here insert the name of the King or Queen for the time being), his (her) heirs and successors, according to law. So help me God."

"I . . . , do swear that I will well and truly serve His (Her) Majesty (here insert the name of the King or Queen for the time being) in the office of (here insert the description of the office). So help me God."

*Affirmations*

"I . . . , do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to His (Her) Majesty (here insert the name of the King or Queen for the time being), his (her) heirs and successors, according to law."

"I . . . , do solemnly and sincerely affirm and declare that I will well and truly serve His (Her) Majesty (here insert the name of the King or Queen for the time being) in the office of (here insert the description of the office)."

The oath or affirmation shall be administered by the Chief Justice of South Africa, or some other judge of the Supreme Court of South Africa, who is hereby required to administer the same.

3. And we do authorise and require the Governor-General, from time to time, by himself or by any other person to be authorised by him in that behalf, to administer to any person chosen as an Executive Councillor the said oath or affirmation of allegiance, together with such other oath or affirmation of fidelity and office as he may think fit or may be prescribed by law.

4. And we do hereby direct and enjoin that the Governor-General in the exercise of our royal prerogative of mercy shall not pardon, grant remission to, or reprieve any offender without receiving, in cases other than capital cases, the advice of one, at least, of his Ministers ; While whenever any offender shall have been condemned to suffer death by the sentence of any court, no such pardon, remission or reprieve shall be granted unless the advice of the Executive Council shall have been obtained by the Governor-General. In the latter case, the Governor-General shall submit to the Executive Council any report that may have been made by the judge who tried the case, and whenever it appears advisable to do so, take measures to invite the attendance of such judge at the Council.

5. Whenever the Governor-General intends visiting some neighbouring colony, territory or State for a period not exceeding one month he shall inform the Executive Council in writing of his intended absence. In all other cases the Governor-General shall not quit the Union without having first obtained leave from us for so doing under our Sign Manual and Signet aforesaid.

6 The Instructions issued by His late Majesty King Edward VII to the Governor-General and Commander-in-Chief in and over the Union of South Africa and dated the 29th day of December, 1909, are hereby repealed without prejudice to anything lawfully done thereunder

Given under our hand at Westminster, this 15th day of February in the year of our Lord 1937 and in the 1st year of our reign

Countersigned and confirmed by the Royal Signet of the Union, according to law, on this 11th day of March in the year 1937

J B M HERTZOG

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## SOUTH-WEST AFRICA MANDATED TERRITORY

The Territory of South West Africa is administered by the Union of South Africa under a mandate dated the 17th December, 1920<sup>(1)</sup> The constitution of the Territory is based on an Act of the Union (No 42 of 1925),<sup>(2)</sup> which was amended by Act No 22 of 1927<sup>(3)</sup> and Act No 38 of 1931<sup>(4)</sup>, and under which provision is made for the appointment of an Administrator and the establishment of an Executive Committee an Advisory Council and a Legislative Assembly of which six members are to be appointed by the Administrator, the remainder being elected

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(1) *State Papers* Vol CXIII, page 1109 It is similar, *mutatis mutandis* to the mandate for Samoa see page 137

(2) *Ibid.*, Vol CXLI, page 687

(3) *Ibid.*, Vol CXXVI page 502

(4) *Ibid.*, Vol CXXIV, page 196

## I R E L A N D

1. Act of the Oireachtas to provide for the Exercise of Executive Authority in matters of External Relations.—December 12, 1936.
2. Constitution.—Approved by Plebiscite, July 1, 1937. Entered into operation, December, 29, 1937.

# I. Executive Authority (External Relations) Act, 1936.

*Be it enacted by the Oireachtas of Saorstát Eireann as follows:—*

1. (1) The diplomatic representatives of Saorstát Eireann in other countries shall be appointed on the authority of the Executive Council.

(2) The consular representatives of Saorstát Eireann in other countries shall be appointed by or on the authority of the Executive Council.

2. Every international agreement concluded on behalf of Saorstát Eireann shall be concluded by or on the authority of the Executive Council.

3. (1) It is hereby declared and enacted that, so long as Saorstát Eireann is associated with the following nations, that is to say, Australia, Canada, Great Britain, New Zealand, and South Africa, and so long as the King recognised by those nations as the symbol of their co-operation continues to act on behalf of each of those nations (on the advice of the several Governments thereof) for the purposes of the appointment of diplomatic and consular representatives and the conclusion of international agreements, the King so recognised may, and is hereby authorised to, act on behalf of Saorstát Eireann for the like purposes as and when advised by the Executive Council so to do.

(2) Immediately upon the passing of this Act, the instrument of abdication executed by His Majesty King Edward VIII on the 10th day of December, 1936 (a copy whereof is set out in the schedule to this Act), shall have effect according to the tenor thereof and His said Majesty shall, for the purposes of the foregoing subsection of this section and all other (if any) purposes, cease to be King, and the King for those purposes shall henceforth be the person who, if His said Majesty had died on the 10th day of December, 1936, unmarried, would for the time being be his successor under the law of Saorstát Eireann.

4. This Act may be cited as "The Executive Authority (External Relations) Act, 1936".

## SCHEDULE

\* \* \*

2 — Constitution, 1937 <sup>(1)</sup>

*In the name of the Most Holy Trinity, from Whom is all authority and to Whom as our final end, all actions both of men and States must be referred,*

*We, the people of Eire,*

*Humbly acknowledging all our obligations to our Divine Lord, Jesus Christ Who sustained our fathers through centuries of trial,*

*Gratefully remembering their heroic and unremitting struggle to regain the rightful independence of our nation,*

*And seeking to promote the common good, with due observance of prudence, justice and charity, so that the dignity and freedom of the individual may be assured true social order attained, the unity of our country restored and concord established with other nations,*

*Do hereby adopt, enact, and give to ourselves this constitution*

## THE NATION

1 The Irish nation hereby affirms its inalienable, indefeasible, and sovereign right to choose its own form of Government, to determine its relations with other nations, and to develop its life political, economic and cultural in accordance with its own genius and traditions

2 The national territory consists of the whole island of Ireland, its islands and the territorial seas

3 Pending the reintegration of the national territory, and without prejudice to the right of the Parliament and Government established by this constitution to exercise jurisdiction over the whole of that territory the laws enacted by that Parliament shall have the like area and extent of application as the laws of Saorstát Eireann and the like extraterritorial effect

## THE STATE

4 The name of the State is 'Eire,' or, in the English language, "Ireland"

5 Ireland is a sovereign, independent, democratic State

6 (1) All powers of government, legislative, executive and judicial, derive, under God, from the people, whose right it is to designate the rulers of the State and, in final appeal, to decide all questions of national policy, according to the requirements of the common good

(2) These powers of government are exercisable only by or on the authority of the organs of State established by this constitution

(1) Also in the Irish language

7. The national flag is the tricolour of green, white and orange.

8. (1) The Irish language as the national language is the first official language.

(2) The English language is recognised as a second official language.

(3) Provision may, however, be made by law for the exclusive use of either of the said languages for any one or more official purposes, either throughout the State or in any part thereof.

9. (1) 1° On the coming into operation of this constitution any person who was a citizen of Saorstát Éireann immediately before the coming into operation of this constitution shall become and be a citizen of Ireland.

2° The future acquisition and loss of Irish nationality and citizenship shall be determined in accordance with law.

3° No person may be excluded from Irish nationality and citizenship by reason of the sex of such person.

(2) Fidelity to the nation and loyalty to the State are fundamental political duties of all citizens.

10. (1) All natural resources, including the air and all forms of potential energy within the jurisdiction of the Parliament and Government established by this constitution and all royalties and franchises within that jurisdiction belong to the State, subject to all estates and interests therein for the time being lawfully vested in any person or body.

(2) All land and all mines, minerals and waters which belonged to Saorstát Éireann immediately before the coming into operation of this constitution belong to the State to the same extent as they then belonged to Saorstát Éireann.

(3) Provision may be made by law for the management of the property which belongs to the State by virtue of this article and for the control of the alienation, whether temporary or permanent, of that property.

(4) Provision may also be made by law for the management of land, mines, minerals and waters acquired by the State after the coming into operation of this constitution and for the control of the alienation, whether temporary or permanent, of the land, mines, minerals and waters so acquired.

11. All revenues of the State from whatever source arising shall, subject to such exception as may be provided by law, form one fund, and shall be appropriated for the purposes and in the manner and subject to the charges and liabilities determined and imposed by law.

## THE PRESIDENT.

12 (1) There shall be a President of Ireland (*Uachtarán na hÉireann*), hereinafter called "the President," who shall take precedence over all other persons in the State and who shall exercise and perform the powers and functions conferred on the President by this constitution and by law

(2) 1° The President shall be elected by direct vote of the people

2° Every citizen who has the right to vote at an election for members of Dail Éireann shall have the right to vote at an election for President

3° The voting shall be by secret ballot and on the system of proportional representation by means of the single transferable vote

(3) 1° The President shall hold office for 7 years from the date upon which he enters upon his office, unless before the expiration of that period he dies or resigns, or is removed from office, or becomes permanently incapacitated, such incapacity being established to the satisfaction of the Supreme Court consisting of not less than five judges

2° A person who holds, or who has held, office as President, shall be eligible for re election to that office once, but only once

3° An election for the office of President shall be held not later than, and not earlier than the 60th day before, the date of the expiration of the term of office of every President, but in the event of the removal from office of the President or of his death resignation, or permanent incapacity established as aforesaid, an election for the office of President shall be held within 60 days after such event

(4) 1° Every citizen who has reached his 35th year of age is eligible for election to the office of President

2° Every candidate for election, not a former or retiring President, must be nominated either by—

(i) not less than twenty persons, each of whom is at the time a member of one of the Houses of the Oireachtas, or

(ii) by the Councils of not less than four administrative counties (including county boroughs) as defined by law

3° No person and no such Council shall be entitled to subscribe to the nomination of more than one candidate in respect of the same election

4° Former or retiring Presidents may become candidates on their own nomination

5° Where only one candidate is nominated for the office of President it shall not be necessary to proceed to a ballot for his election

(5) Subject to the provisions of this article, elections for the office of President shall be regulated by law

(6) 1° The President shall not be a member of either House of the Oireachtas.

2° If a member of either House of the Oireachtas be elected President, he shall be deemed to have vacated his seat in that House.

3° The President shall not hold any other office or position of emolument.

(7) The first President shall enter upon his office as soon as may be after his election, and every subsequent President shall enter upon his office on the day following the expiration of the term of office of his predecessor or as soon as may be thereafter or, in the event of his predecessor's removal from office, death, resignation or permanent incapacity established as provided by section (3) hereof, as soon as may be after the election.

(8) The President shall enter upon his office by taking and subscribing publicly, in the presence of members of both Houses of the Oireachtas, of judges of the Supreme Court and of the High Court, and other public personages, the following declaration:—

"In the presence of Almighty God I . . . do solemnly and sincerely promise and declare that I will maintain the constitution of Ireland and uphold its laws, that I will fulfil my duties faithfully and conscientiously in accordance with the constitution and the law, and that I will dedicate my abilities to the service and welfare of the people of Ireland. May God direct and sustain me."

(9) The President shall not leave the State during his term of office save with the consent of the Government.

(10) 1° The President may be impeached for stated misbehaviour.

2° The charge shall be preferred by either of the Houses of the Oireachtas, subject to and in accordance with the provisions of this section.

3° A proposal to either House of the Oireachtas to prefer a charge against the President under this section shall not be entertained unless upon a notice of motion in writing signed by not less than thirty members of that House.

4° No such proposal shall be adopted by either of the Houses of the Oireachtas save upon a resolution of that House supported by not less than two-thirds of the total membership thereof.

5° When a charge has been preferred by either House of the Oireachtas, the other House shall investigate the charge, or cause the charge to be investigated.

6° The President shall have the right to appear and to be represented at the investigation of the charge.

7° If, as a result of the investigation, a resolution be passed supported by not less than two-thirds of the total membership of the House of the Oireachtas by which the charge was investigated, or caused to be investigated, declaring that the charge preferred



against the President has been sustained and that the misbehaviour, the subject of the charge, was such as to render him unfit to continue in office, such resolution shall operate to remove the President from his office

(11) 1° The President shall have an official residence in or near the city of Dublin

2° The President shall receive such emoluments and allowances as may be determined by law

3° The emoluments and allowances of the President shall not be diminished during his term of office

13 (1) 1° The President shall, on the nomination of Dail Eireann, appoint the Taoiseach, that is, the head of the Government or Prime Minister

2° The President shall on the nomination of the Taoiseach with the previous approval of Dail Eireann, appoint the other members of the Government

3° The President shall, on the advice of the Taoiseach, accept the resignation or terminate the appointment of any member of the Government

(2) 1° Dail Eireann shall be summoned and dissolved by the President on the advice of the Taoiseach

2° The President may in his absolute discretion refuse to dissolve Dail Eireann on the advice of a Taoiseach who has ceased to retain the support of a majority in Dail Eireann

3° The President may at any time, after consultation with the Council of State convene a meeting of either or both of the Houses of the Oireachtas

(3) 1° Every bill passed or deemed to have been passed by both Houses of the Oireachtas shall require the signature of the President for its enactment into law

2° The President shall promulgate every law made by the Oireachtas

(4) The supreme command of the defence forces is hereby vested in the President

(5) 1° The exercise of the supreme command of the defence forces shall be regulated by law

2° All commissioned officers of the defence forces shall hold their commissions from the President

(6) The right of pardon and the power to commute or remit punishment imposed by any court exercising criminal jurisdiction are hereby vested in the President, but such power of commutation or remission may, except in capital cases, also be conferred by law on other authorities

(7) 1° The President may, after consultation with the Council of State, communicate with the Houses of the Oireachtas by message or address on any matter of national or public importance

2° The President may, after consultation with the Council of State, address a message to the nation at any time on any such matter.

3° Every such message or address must, however, have received the approval of the Government.

(8) 1° The President shall not be answerable to either House of the Oireachtas or to any court for the exercise and performance of the powers and functions of his office or for any act done or purporting to be done by him in the exercise and performance of these powers and functions.

2° The behaviour of the President may, however, be brought under review in either of the Houses of the Oireachtas for the purposes of section (10) of article 12 of this constitution, or by any court, tribunal or body appointed or designated by either of the Houses of the Oireachtas for the investigation of a charge under section (10) of the said article.

(9) The powers and functions conferred on the President by this constitution shall be exercisable and performable by him only on the advice of the Government, save where it is provided by this constitution that he shall act in his absolute discretion or after consultation with or in relation to the Council of State, or on the advice or nomination of, or on receipt of any other communication from, any other person or body.

(10) Subject to this constitution, additional powers and functions may be conferred on the President by law.

(11) No power or function conferred on the President by law shall be exercisable or performable by him save only on the advice of the Government.

14. (1) In the event of the absence of the President, or his temporary incapacity, or his permanent incapacity established as provided by section (3) of article 12 hereof, or in the event of his death, resignation, removal from office, or failure to exercise and perform the powers and functions of his office or any of them, or at any time at which the office of President may be vacant, the powers and functions conferred on the President by this constitution shall be exercised and performed by a Commission constituted as provided in section (2) of this article.

(2) 1° The Commission shall consist of the following persons, namely, the Chief Justice, the Chairman of Dáil Eireann (*An Ceann Comhairle*), and the Chairman of Seanad Eireann.

2° The president of the High Court shall act as a member of the Commission in the place of the Chief Justice on any occasion on which the office of Chief Justice is vacant or on which the Chief Justice is unable to act.

3° The Deputy Chairman of Dáil Eireann shall act as a member of the Commission in the place of the Chairman of Dáil

Eireann on any occasion on which the office of Chairman of Dail Eireann is vacant or on which the said Chairman is unable to act

4° The Deputy Chairman of Seanad Eireann shall act as a member of the Commission in the place of the Chairman of Seanad Eireann on any occasion on which the office of Chairman of Seanad Eireann is vacant or on which the said Chairman is unable to act

(3) The Commission may act by any two of their number and may act notwithstanding a vacancy in their membership

(4) The Council of State may by a majority of its members make such provision as to them may seem meet for the exercise and performance of the powers and functions conferred on the President by this constitution in any contingency which is not provided for by the foregoing provisions of this article

(5) 1° The provisions of this constitution which relate to the exercise and performance by the President of the powers and functions conferred on him by this constitution shall subject to the subsequent provisions of this section apply to the exercise and performance of the said powers and functions under this article

2° In the event of the failure of the President to exercise or perform any power or function which the President is by this constitution required to exercise or perform within a specified time the said power or function shall be exercised or performed under this article as soon as may be after the expiration of the time so specified

## THE NATIONAL PARLIAMENT

### *Constitution and Powers*

15 (1) 1° The national Parliament shall be called and known and is in this constitution generally referred to, as 'the Oireachtas'

2° The Oireachtas shall consist of the President and two Houses, viz a House of Representatives to be called Dail Eireann and a Senate to be called Seanad Eireann

3° The Houses of the Oireachtas shall sit in or near the city of Dublin or in such other place as they may from time to time determine

(2) 1° The sole and exclusive power of making laws for the State is hereby vested in the Oireachtas no other legislative authority has power to make laws for the State

2° Provision may however be made by law for the creation or recognition of subordinate Legislatures and for the powers and functions of these Legislatures

(3) 1° The Oireachtas may provide for the establishment or recognition of functional or vocational councils representing branches of the social and economic life of the people

2° A law establishing or recognising any such council shall determine its rights, powers and duties, and its relation to the Oireachtas and to the Government.

(4) 1° The Oireachtas shall not enact any law which is in any respect repugnant to this constitution or any provision thereof.

2° Every law enacted by the Oireachtas which is in any respect repugnant to this constitution or to any provision thereof shall, but to the extent only of such repugnancy, be invalid.

(5) The Oireachtas shall not declare acts to be infringements of the law which were not so at the date of their commission.

(6) 1° The right to raise and maintain military or armed forces is vested exclusively in the Oireachtas.

2° No military or armed force, other than a military or armed force raised and maintained by the Oireachtas, shall be raised or maintained for any purpose whatsoever.

(7) The Oireachtas shall hold at least one session every year.

(8) 1° Sitzings of each House of the Oireachtas shall be public.

2° In cases of special emergency, however, either House may hold a private sitting with the assent of two-thirds of the members present.

(9) 1° Each House of the Oireachtas shall elect from its members its own Chairman and Deputy Chairman, and shall prescribe their powers and duties.

2° The remuneration of the Chairman and Deputy Chairman of each House shall be determined by law.

(10) Each House shall make its own rules and standing orders, with power to attach penalties for their infringement, and shall have power to ensure freedom of debate, to protect its official documents and the private papers of its members, and to protect itself and its members against any person or persons interfering with, molesting or attempting to corrupt its members in the exercise of their duties.

(11) 1° All questions in each House shall, save as otherwise provided by this constitution, be determined by a majority of the votes of the members present and voting other than the Chairman or presiding member.

2° The Chairman or presiding member shall have and exercise a casting vote in the case of an equality of votes.

3° The number of members necessary to constitute a meeting of either House for the exercise of its powers shall be determined by its standing orders.

(12) All official reports and publications of the Oireachtas or of either House thereof and utterances made in either House wherever published shall be privileged.

(13) The members of each House of the Oireachtas shall, except in case of treason as defined in this constitution, felony or

breach of the peace, be privileged from arrest in going to and returning from, and while within the precincts of, either House, and shall not, in respect of any utterance in either House be amenable to any court or any authority other than the House itself

(14) No person may be at the same time a member of both Houses of the Oireachtas, and, if any person who is already a member of either House becomes a member of the other House, he shall forthwith be deemed to have vacated his first seat

(15) The Oireachtas may make provision by law for the payment of allowances to the members of each House thereof in respect of their duties as public representatives and for the grant to them of free travelling and such other facilities (if any) in connection with those duties as the Oireachtas may determine

### *Dáil Eireann*

16 (1) 1° Every citizen without distinction of sex who has reached the age of 21 years, and who is not placed under disability or incapacity by this constitution or by law, shall be eligible for membership of Dáil Eireann

2° Every citizen without distinction of sex who has reached the age of 21 years, who is not disqualified by law and complies with the provisions of the law relating to the election of members of Dáil Eireann, shall have the right to vote at an election for members of Dáil Eireann

3° No law shall be enacted placing any citizen under disability or incapacity for membership of Dáil Eireann on the ground of sex or disqualifying any citizen from voting at an election for members of Dáil Eireann on that ground

4° No voter may exercise more than one vote at an election for Dáil Eireann and the voting shall be by secret ballot

(2) 1° Dáil Eireann shall be composed of members who represent constituencies determined by law

2° The number of members shall from time to time be fixed by law, but the total number of members of Dáil Eireann shall not be fixed at less than one member for each 30,000 of the population, or at more than one member for each 20,000 of the population

3° The ratio between the number of members to be elected at any time for each constituency and the population of each constituency, as ascertained at the last preceding census, shall so far as it is practicable, be the same throughout the country

4° The Oireachtas shall revise the constituencies at least once in every 12 years, with due regard to changes in distribution of the population, but any alterations in the constituencies shall not take effect during the life of Dáil Eireann sitting when such revision is made

5° The members shall be elected on the system of proportional representation by means of the single transferable vote.

6° No law shall be enacted whereby the number of members to be returned for any constituency shall be less than three.

(3) 1° Dáil Éireann shall be summoned and dissolved as provided by section (2) of article 13 of this constitution.

2° A general election for members of Dáil Éireann shall take place not later than 30 days after a dissolution of Dáil Éireann.

(4) 1° Polling at every general election for Dáil Éireann shall as far as practicable take place on the same day throughout the country.

2° Dáil Éireann shall meet within 30 days from that polling day.

(5) The same Dáil Éireann shall not continue for a longer period than 7 years from the date of its first meeting: a shorter period may be fixed by law.

(6) Provision shall be made by law to enable the member of Dáil Éireann who is the Chairman immediately before a dissolution of Dáil Éireann to be deemed without any actual election to be elected a member of Dáil Éireann at the ensuing general election.

(7) Subject to the foregoing provisions of this article, elections for membership of Dáil Éireann, including the filling of casual vacancies, shall be regulated in accordance with law.

17. (1) 1° As soon as possible after the presentation to Dáil Éireann under article 28 of this constitution of the estimates of receipts and the estimates of expenditure of the State for any financial year, Dáil Éireann shall consider such estimates.

2° Save in so far as may be provided by specific enactment in each case, the legislation required to give effect to the financial resolutions of each year shall be enacted within that year.

(2) Dáil Éireann shall not pass any vote or resolution, and no law shall be enacted, for the appropriation of revenue or other public moneys unless the purpose of the appropriation shall have been recommended to Dáil Éireann by a message from the Government signed by the Taoiseach.

### *Seanad Éireann*

18. (1) Seanad Éireann shall be composed of sixty members, of whom eleven shall be nominated members and forty-nine shall be elected members.

(2) A person to be eligible for membership of Seanad Éireann must be eligible to become a member of Dáil Éireann.

(3) The nominated members of Seanad Éireann shall be nominated by the Taoiseach with their prior consent.

(4) The elected members of Seanad Éireann shall be elected as follows —

(i) Three shall be elected by the National University of Ireland

(ii) Three shall be elected by the University of Dublin

(iii) Forty three shall be elected from panels of candidates constituted as hereinafter provided

(5) Every election of the elected members of Seanad Éireann shall be held on the system of proportional representation by means of the single transferable vote, and by secret postal ballot

(6) The members of Seanad Éireann to be elected by the Universities shall be elected on a franchise and in the manner to be provided by law

(7) 1° Before each general election of the members of Seanad Éireann to be elected from panels of candidates, five panels of candidates shall be formed in the manner provided by law containing respectively the names of persons having knowledge and practical experience of the following interests and services, namely —

(i) National language and culture, literature, art, education and such professional interests as may be defined by law for the purpose of this panel

(ii) Agriculture and allied interests, and fisheries

(iii) Labour, whether organised or unorganised

(iv) Industry and commerce, including banking, finance, accountancy, engineering and architecture

(v) Public administration and social services, including voluntary social activities

2° Not more than eleven and, subject to the provisions of article 19 hereof, not less than five members of Seanad Éireann shall be elected from any one panel

(8) A general election for Seanad Éireann shall take place not later than 90 days after a dissolution of Dáil Éireann, and the first meeting of Seanad Éireann after the general election shall take place on a day to be fixed by the President on the advice of the Taoiseach

(9) Every member of Seanad Éireann shall, unless he previously dies, resigns, or becomes disqualified, continue to hold office until the day before the polling day of the general election for Seanad Éireann next held after his election or nomination

(10) 1° Subject to the foregoing provisions of this article elections of the elected members of Seanad Éireann shall be regulated by law

2° Casual vacancies in the number of the nominated members of Seanad Éireann shall be filled by nomination by the Taoiseach with the prior consent of persons so nominated

3° Casual vacancies in the number of the elected members of Seanad Éireann shall be filled in the manner provided by law

19. Provision may be made by law for the direct election by any functional or vocational group or association or council of so many members of Seanad Eireann as may be fixed by such law in substitution for an equal number of the members to be elected from the corresponding panels of candidates constituted under article 18 of this constitution.

### *Legislation*

20. (1) Every bill initiated in and passed by Dáil Eireann shall be sent to Seanad Eireann and may, unless it be a money bill, be amended in Seanad Eireann and Dáil Eireann shall consider any such amendments.

(2) 1° A bill other than a money bill may be initiated in Seanad Eireann, and if passed by Seanad Eireann, shall be introduced in Dáil Eireann.

2° A bill initiated in Seanad Eireann if amended in Dáil Eireann shall be considered as a bill initiated in Dáil Eireann.

(3) A bill passed by either House and accepted by the other House shall be deemed to have been passed by both Houses.

### MONEY BILLS

21. (1) 1° Money bills shall be initiated in Dáil Eireann only.

2° Every money bill passed by Dáil Eireann shall be sent to Seanad Eireann for its recommendations.

(2) 1° Every money bill sent to Seanad Eireann for its recommendations shall, at the expiration of a period not longer than 21 days after it shall have been sent to Seanad Eireann, be returned to Dáil Eireann, which may accept or reject all or any of the recommendations of Seanad Eireann.

2° If such money bill is not returned by Seanad Eireann to Dáil Eireann within such 21 days or is returned within such 21 days with recommendations which Dáil Eireann does not accept, it shall be deemed to have been passed by both Houses at the expiration of the said 21 days.

22. (1) 1° A money bill means a bill which contains only provisions dealing with all or any of the following matters, namely, the imposition, repeal, remission, alteration or regulation of taxation ; the imposition for the payment of debt or other financial purposes of charges on public moneys or the variation or repeal of any such charges ; supply ; the appropriation, receipt, custody, issue or audit of accounts of public money ; the raising or guarantee of any loan or the repayment thereof ; matters subordinate and incidental to these matters or any of them.

2° In this definition the expressions " taxation ", " public money " and " loan " respectively do not include any taxation, money or loan raised by local authorities or bodies for local purposes.



(2) 1° The Chairman of Dail Eireann shall certify any bill which, in his opinion, is a money bill to be a money bill, and his certificate shall, subject to the subsequent provisions of this section, be final and conclusive

2° Seanad Eireann, by a resolution, passed at a sitting at which not less than thirty members are present, may request the President to refer the question whether the bill is or is not a money bill to a Committee of Privileges

3° If the President after consultation with the Council of State decides to accede to the request he shall appoint a Committee of Privileges consisting of an equal number of members of Dail Eireann and of Seanad Eireann and a chairman who shall be a judge of the Supreme Court these appointments shall be made after consultation with the Council of State In the case of an equality of votes but not otherwise the chairman shall be entitled to vote

4° *The President shall refer the question to the Committee of Privileges so appointed and the Committee shall report its decision thereon to the President within 21 days after the day on which the bill was sent to Seanad Eireann*

5° The decision of the Committee shall be final and conclusive

6° If the President after consultation with the Council of State decides not to accede to the request of Seanad Eireann, or if the Committee of Privileges fails to report within the time hereinbefore specified, the certificate of the Chairman of Dail Eireann shall stand confirmed

#### TIME FOR CONSIDERATION OF BILLS

23 (1) This article applies to every bill passed by Dail Eireann and sent to Seanad Eireann other than a money bill or a bill the time for the consideration of which by Seanad Eireann shall have been abridged under article 24 of this constitution

1° Whenever a bill to which this article applies is within the stated period defined in the next following sub-section either rejected by Seanad Eireann or passed by Seanad Eireann with amendments to which Dail Eireann does not agree or is neither passed (with or without amendment) nor rejected by Seanad Eireann within the stated period, the bill shall if Dail Eireann so resolves within 180 days after the expiration of the stated period, be deemed to have been passed by both Houses of the Oireachtas on the day on which the resolution is passed

2° The stated period is the period of 90 days commencing on the day on which the bill is first sent by Dail Eireann to Seanad Eireann or any longer period agreed upon in respect of the bill by both Houses of the Oireachtas

(2) 1° The preceding section of this article shall apply to a bill which is initiated in and passed by Seanad Éireann, amended by Dáil Éireann, and accordingly deemed to have been initiated in Dáil Éireann.

2° For the purpose of this application the stated period shall in relation to such a bill commence on the day on which the bill is first sent to Seanad Éireann after having been amended by Dáil Éireann.

24. (1) If and whenever on the passage by Dáil Éireann of any bill, other than a bill expressed to be a bill containing a proposal to amend the constitution, the Taoiseach certifies by messages in writing addressed to the President and to the Chairman of each House of the Oireachtas that, in the opinion of the Government, the bill is urgent and immediately necessary for the preservation of the public peace and security, or by reason of the existence of a public emergency, whether domestic or international, the time for the consideration of such bill by Seanad Éireann shall, if Dáil Éireann so resolves and if the President, after consultation with the Council of State, concurs, be abridged to such period as shall be specified in the resolution.

(2) Where a bill the time for the consideration of which by Seanad Éireann has been abridged under this article is within the period specified in the resolution either rejected by Seanad Éireann or passed by Seanad Éireann with amendments or recommendations to which Dáil Éireann does not agree or is neither passed (with or without amendments or recommendations) nor rejected by Seanad Éireann within the period so specified, the bill shall be deemed to have been passed by both Houses of the Oireachtas at the expiration of that period.

(3) When a bill the time for the consideration of which by Seanad Éireann has been abridged under this article becomes law it shall remain in force for a period of 90 days from the date of its enactment and no longer unless, before the expiration of that period, both Houses shall have agreed that such law shall remain in force for a longer period and the longer period so agreed upon shall have been specified in resolutions passed by both Houses.

#### SIGNING AND PROMULGATION OF LAWS

25. (1) As soon as any bill, other than a bill expressed to be a bill containing a proposal for the amendment of this constitution, shall have been passed or deemed to have been passed by both Houses of the Oireachtas, the Taoiseach shall present it to the President for his signature and for promulgation by him as a law in accordance with the provisions of this article.

(2) 1° Save as otherwise provided by this constitution, every bill so presented to the President for his signature and for

promulgation by him as a law shall be signed by the President not earlier than 5 and not later than 7 days after the date on which the bill shall have been presented to him

2° At the request of the Government, with the prior concurrence of Seanad Éireann, the President may sign any bill the subject of such request on a date which is earlier than 5 days after such date as aforesaid

(3) Every bill the time for the consideration of which by Seanad Éireann shall have been abridged under article 24 of this constitution shall be signed by the President on the day on which such bill is presented to him for signature and promulgation as a law

(4) 1° Every bill signed by the President under this constitution shall become and be law as on and from the day on which the bill shall have been so signed

2° Every bill signed by the President shall come into operation on the day on which it is so signed unless the contrary intention appears

3° Every bill so signed shall be promulgated by the President as a law by the publication by this direction of a notice in the *Irish Official* stating that such bill has become law

4° As soon as may be after the President has signed any bill and promulgated it as a law, the signed text shall be enrolled for record in the office of the Registrar of the Supreme Court and such signed text shall be conclusive evidence as to the provisions of such law

5° An official translation of every law enacted by the Oireachtas in the Irish language shall be issued in the English language and an official translation of every law enacted by the Oireachtas in the English language shall be issued in the Irish language

#### REFERENCE OF BILLS TO THE SUPREME COURT

26 This article applies to any bill passed or deemed to have been passed by both Houses of the Oireachtas other than a money bill, or a bill expressed to be a bill containing a proposal to amend the constitution, or a bill the time for the consideration of which by Seanad Éireann shall have been abridged under article 24 of this constitution

(1) 1° The President may, after consultation with the Council of State, refer any bill to which this article applies to the Supreme Court for a decision on the question as to whether such bill or any specified provision or provisions of such bill is or are repugnant to this constitution or to any provision thereof

2° Every such reference shall be made not later than 4 days after the date on which such bill shall have been passed or deemed to have been passed by both Houses of the Oireachtas

3° The President shall not sign any bill the subject of a reference to the Supreme Court under this article pending the pronouncement of the decision of the court.

(2) 1° The Supreme Court consisting of not less than five judges shall consider every question referred to it by the President under this article for a decision, and, having heard arguments by or on behalf of the Attorney-General and by counsel assigned by the Court, shall pronounce its decision on such question in open court as soon as may be, and in any case not later than 60 days after the date of such reference.

2° The decision of the majority of the judges of the Supreme Court shall, for the purposes of this article, be the decision of the Court.

(3) 1° In every case in which the Supreme Court decides that any provision of a bill the subject of a reference to the Supreme Court under this article is repugnant to this constitution or to any provision thereof, the President shall decline to sign such bill.

2° In every other case the President shall sign the bill as soon as may be after the date on which the decision of the Supreme Court shall have been pronounced.

#### REFERENCE OF BILLS TO THE PEOPLE

27. This article applies to any bill, other than a bill expressed to be a bill containing a proposal for the amendment of this constitution, which shall have been deemed, by virtue of article 23 hereof, to have been passed by both Houses of the Oireachtas.

(1) A majority of the members of Seanad Eireann and not less than one-third of the members of Dáil Eireann may by a joint petition addressed to the President by them under this article request the President to decline to sign and promulgate as a law any bill to which this article applies on the ground that the bill contains a proposal of such national importance that the will of the people thereon ought to be ascertained.

(2) Every such petition shall be in writing signed by the petitioners, shall contain a statement of the particular ground or grounds on which the request is based, and shall be presented to the President not later than 4 days after the date on which the bill shall have been deemed to have been passed by both Houses of the Oireachtas.

(3) Upon receipt of a petition addressed to him under this article, the President shall forthwith consider such petition and shall, after consultation with the Council of State, pronounce his decision thereon not later than 10 days after the date on which the bill to which such petition relates shall have been deemed to have been passed by both Houses of the Oireachtas.

(4) 1° In every case in which the President decides that a bill the subject of a petition under this article contains a proposal of such national importance that the will of the people thereon ought to be ascertained, he shall inform the Taoiseach and the Chairman of each House of the Oireachtas accordingly in writing under his hand and Seal and shall decline to sign and promulgate such bill as a law unless and until the proposal shall have been approved either—

(i) by the people at a referendum in accordance with the provisions of section (2) of article 47 of this constitution within a period of 18 months from the date of the President's decision, or

(ii) by a resolution of Dail Eireann passed within the said period after a dissolution and reassembly of Dail Eireann

2° Every such bill which shall have been approved either by the people or by a resolution of Dail Eireann in accordance with the foregoing provisions of this section shall as soon as may be after such approval be presented to the President for his signature and promulgation by him as a law and the President shall thereupon sign the bill and duly promulgate it as a law

(5) In every case in which the President decides that a bill the subject of a petition under this article does not contain a proposal of such national importance that the will of the people thereon ought to be ascertained, he shall inform the Taoiseach and the Chairman of each House of the Oireachtas accordingly in writing under his hand and Seal, and such bill shall be signed by the President not later than 11 days after the date on which the bill shall have been deemed to have been passed by both Houses of the Oireachtas and shall be duly promulgated by him as a law

## THE GOVERNMENT

28 (1) The Government shall consist of not less than seven and not more than fifteen members who shall be appointed by the President in accordance with the provisions of this constitution

(2) The executive power of the State shall, subject to the provisions of this constitution, be exercised by or on the authority of the Government

(3) 1° War shall not be declared and the State shall not participate in any war save with the assent of Dáil Eireann

2° In the case of actual invasion, however, the Government may take whatever steps they may consider necessary for the protection of the State, and Dáil Eireann if not sitting shall be summoned to meet at the earliest practicable date

3° Nothing in this constitution shall be invoked to invalidate any law enacted by the Oireachtas which is expressed to be for the purpose of securing the public safety and the preservation of the State in time of war or armed rebellion, or to nullify any act done or purporting to be done in pursuance of any such law.

(4) 1° The Government shall be responsible to Dáil Eireann.

2° The Government shall meet and act as a collective authority, and shall be collectively responsible for the Departments of State administered by the members of the Government.

3° The Government shall prepare estimates of the receipts and estimates of the expenditure of the State for each financial year, and shall present them to Dáil Eireann for consideration.

(5) 1° *The head of the Government, or Prime Minister, shall be called, and is in this constitution referred to as, "the Taoiseach."*

2° The Taoiseach shall keep the President generally informed on matters of domestic and international policy.

(6) 1° The Taoiseach shall nominate a member of the Government to be the Tánaiste.

2° The Tánaiste shall act for all purposes in the place of the Taoiseach if the Taoiseach should die, or become permanently incapacitated, until a new Taoiseach shall have been appointed.

3° The Tánaiste shall also act for or in the place of the Taoiseach during the temporary absence of the Taoiseach.

(7) 1° The Taoiseach, the Tánaiste and the member of the Government who is in charge of the Department of Finance must be members of Dáil Eireann.

2° The other members of the Government must be members of Dáil Eireann or Seanad Eireann, but not more than two may be members of Seanad Eireann.

(8) Every member of the Government shall have the right to attend and be heard in each House of the Oireachtas.

(9) 1° The Taoiseach may resign from office at any time by placing his resignation in the hands of the President.

2° Any other member of the Government may resign from office by placing his resignation in the hands of the Taoiseach for submission to the President.

3° The President shall accept the resignation of a member of the Government, other than the Taoiseach, if so advised by the Taoiseach.

4° The Taoiseach may at any time, for reasons which to him seem sufficient, request a member of the Government to resign; should the member concerned fail to comply with the request, his appointment shall be terminated by the President if the Taoiseach so advises.

(10) The Taoiseach shall resign from office upon his ceasing to retain the support of a majority in Dáil Eireann unless on his advice the President dissolves Dáil Eireann and on the reassembly of Dáil Eireann after the dissolution the Taoiseach secures the support of a majority in Dáil Eireann.

(11) 1° If the Taoiseach at any time resigns from office the other members of the Government shall be deemed also to have resigned from office, but the Taoiseach and the other members of

the Government shall continue to carry on their duties until their successors shall have been appointed

2° The members of the Government in office at the date of a dissolution of Dáil Éireann shall continue to hold office until their successors shall have been appointed

(12) The following matters shall be regulated in accordance with law namely the organisation of and distribution of business amongst Departments of State the designation of members of the Government to be Ministers in charge of the said Departments the discharge of the functions of the office of a member of the Government during his temporary absence or incapacity and the remuneration of the members of the Government

## INTERNATIONAL RELATIONS

29 (1) Ireland affirms its devotion to the ideal of peace and friendly co operation amongst nations founded on international justice and morality

(2) Ireland affirms its adherence to the principle of the pacific settlement of international disputes by international arbitration or judicial determination

(3) Ireland accepts the generally recognised principles of international law as its rule of conduct in its relations with other States

(4) 1° The executive power of the State in or in connection with its external relations shall in accordance with article 28 of this constitution be exercised by or on the authority of the Government

2° For the purpose of the exercise of any executive function of the State in or in connection with its external relations the Government may to such extent and subject to such conditions if any as may be determined by law avail of or adopt any organ instrument or method of procedure used or adopted for the like purpose by the members of any group or league of nations with which the State is or becomes associated for the purpose of international co operation in matters of common concern

(5) 1° Every international agreement to which the State becomes a party shall be laid before Dáil Éireann

2° The State shall not be bound by any international agreement involving a charge upon public funds unless the terms of the agreement shall have been approved by Dáil Éireann

3° This section shall not apply to agreements or conventions of a technical and administrative character

(6) No international agreement shall be part of the domestic law of the State save as may be determined by the Oireachtas

## THE ATTORNEY-GENERAL

30. (1) There shall be an Attorney-General who shall be the adviser of the Government in matters of law and legal opinion, and shall exercise and perform all such powers, functions and duties as are conferred or imposed on him by this constitution or by law.

(2) The Attorney-General shall be appointed by the President on the nomination of the Taoiseach.

(3) All crimes and offences prosecuted in any court constituted under article 34 of this constitution other than a court of summary jurisdiction shall be prosecuted in the name of the people and at the suit of the Attorney-General or some other person authorised in accordance with law to act for that purpose.

(4) The Attorney-General shall not be a member of the Government.

(5) 1° The Attorney-General may at any time resign from office by placing his resignation in the hands of the Taoiseach for submission to the President.

2° The Taoiseach may, for reasons which to him seem sufficient, request the resignation of the Attorney-General.

3° In the event of failure to comply with the request, the appointment of the Attorney-General shall be terminated by the President if the Taoiseach so advises.

4° The Attorney-General shall retire from office upon the resignation of the Taoiseach, but may continue to carry on his duties until the successor to the Taoiseach shall have been appointed.

(6) Subject to the foregoing provisions of this article, the office of Attorney-General, including the remuneration to be paid to the holder of the office, shall be regulated by law.

## THE COUNCIL OF STATE

31. (1) There shall be a Council of State to aid and counsel the President on all matters on which the President may consult the said Council in relation to the exercise and performance by him of such of his powers and functions as are by this constitution expressed to be exercisable and performable after consultation with the Council of State, and to exercise such other functions as are conferred on the said Council by this constitution.

(2) The Council of State shall consist of the following members :

(i) As *ex officio* members: the Taoiseach, the Tánaiste, the Chief Justice, the president of the High Court, the Chairman of Dáil Éireann, the Chairman of Seanad Éireann, and the Attorney-General.

(ii) Every person able and willing to act as a member of the Council of State who shall have held the office of President, or the office of Taoiseach, or the office of Chief Justice, or the office of President of the Executive Council of Saorstát Éireann.



(iii) Such other persons, if any, as may be appointed by the President under this article to be members of the Council of State

(3) The President may at any time and from time to time by warrant under his hand and Seal appoint such other persons as, in his absolute discretion, he may think fit to be members of the Council of State but not more than seven persons so appointed shall be members of the Council of State at the same time

(4) Every member of the Council of State shall at the first meeting thereof which he attends as a member take and subscribe a declaration in the following form

' In the presence of Almighty God I do solemnly and sincerely promise and declare that I will faithfully and conscientiously fulfil my duties as a member of the Council of State "

(5) Every member of the Council of State appointed by the President, unless he previously dies resigns, becomes permanently incapacitated, or is removed from office, shall hold office until the successor of the President by whom he was appointed shall have entered upon his office

(6) Any member of the Council of State appointed by the President may resign from office by placing his resignation in the hands of the President

(7) The President may for reasons which to him seem sufficient, by an order under his hand and Seal, terminate the appointment of any member of the Council of State appointed by him

(8) Meetings of the Council of State may be convened by the President at such times and places as he shall determine

32 The President shall not exercise or perform any of the powers or functions which are by this constitution expressed to be exercisable or performable by him after consultation with the Council of State unless, and on every occasion before so doing, he shall have convened a meeting of the Council of State and the members present at such meeting shall have been heard by him

## THE COMPTROLLER AND AUDITOR-GENERAL

33 (1) There shall be a Comptroller and Auditor-General to control on behalf of the State all disbursements and to audit all accounts of moneys administered by or under the authority of the Oireachtas

(2) The Comptroller and Auditor-General shall be appointed by the President on the nomination of Dail Eireann

(3) The Comptroller and Auditor-General shall not be a member of either House of the Oireachtas and shall not hold any other office or position of emolument

(4) The Comptroller and Auditor-General shall report to Dail Eireann at stated periods as determined by law

(5) 1° The Comptroller and Auditor-General shall not be removed from office except for stated misbehaviour or incapacity, and then only upon resolutions passed by Dáil Eireann and by Seanad Eireann calling for his removal.

2° The Taoiseach shall duly notify the President of any such resolutions as aforesaid passed by Dáil Eireann and by Seanad Eireann and shall send him a copy of each such resolution certified by the Chairman of the House of the Oireachtas by which it shall have been passed.

3° Upon receipt of such notification and of copies of such resolutions, the President shall forthwith, by an order under his hand and Seal, remove the Comptroller and Auditor-General from office.

(6) Subject to the foregoing, the terms and conditions of the office of Comptroller and Auditor-General shall be determined by law.

## THE COURTS

34. (1) Justice shall be administered in public courts established by law by judges appointed in the manner provided by this constitution.

(2) The courts shall comprise courts of first instance and a court of final appeal.

(3) 1° The courts of first instance shall include a High Court invested with full original jurisdiction in and power to determine all matters and questions whether of law or fact, civil or criminal.

2° The jurisdiction of the High Court shall extend to the question of the validity of any law having regard to the provisions of this constitution, and in all cases in which any such matters shall come into question the High Court alone shall exercise original jurisdiction.

3° The courts of first instance shall also include courts of local and limited jurisdiction with a right of appeal as determined by law.

(4) 1° The court of final appeal shall be called "the Supreme Court."

2° The president of the Supreme Court shall be called "the Chief Justice."

3° The Supreme Court shall, with such exceptions and subject to such regulations as may be prescribed by law, have appellate jurisdiction from all decisions of the High Court, and shall also have appellate jurisdiction from such decisions of other courts as may be prescribed by law.

4° No law shall be enacted excepting from the appellate jurisdiction of the Supreme Court cases which involve questions as to the validity of any law having regard to the provisions of this constitution.

5° The decision of the Supreme Court shall in all cases be final and conclusive

(5) 1° Every person appointed a judge under this constitution shall make and subscribe the following declaration —

“In the presence of Almighty God I do solemnly and sincerely promise and declare that I will duly and faithfully and to the best of my knowledge and power execute the office of Chief Justice (*or as the case may be*) without fear or favour, affection or ill-will towards any man, and that I will uphold the constitution and the laws May God direct and sustain me’

2° This declaration shall be made and subscribed by the Chief Justice in the presence of the President and by each of the other judges of the Supreme Court the judges of the High Court and the judges of every other court in the presence of the Chief Justice or the senior available judge of the Supreme Court in open court

3° The declaration shall be made and subscribed by every judge before entering upon his duties as such judge and in any case not later than 10 days after the date of his appointment or such later date as may be determined by the President

4° Any judge who declines or neglects to make such declaration as aforesaid shall be deemed to have vacated his office

35 (1) The judges of the Supreme Court, the High Court and all other courts established in pursuance of article 34 hereof shall be appointed by the President

(2) All judges shall be independent in the exercise of their judicial functions and subject only to this constitution and the law

(3) No judge shall be eligible to be a member of either House of the Oireachtas or to hold any other office or position of emolument

(4) 1° A judge of the Supreme Court or the High Court shall not be removed from office except for stated misbehaviour or incapacity and then only upon resolutions passed by Dail Eireann and by Seanad Eireann calling for his removal

2° The Taoiseach shall duly notify the President of any such resolutions passed by Dail Eireann and by Seanad Eireann and shall send him a copy of every such resolution certified by the Chairman of the House of the Oireachtas by which it shall have been passed

3° Upon receipt of such notification and of copies of such resolutions the President shall forthwith, by an order under his hand and Seal, remove from office the judge to whom they relate

(5) The remuneration of a judge shall not be reduced during his continuance in office

36 Subject to the foregoing provisions of this constitution relating to the courts, the following matters shall be regulated in accordance with law, that is to say —

(i) the number of judges of the Supreme Court, and of the

High Court, the remuneration, age of retirement and pensions of such judges;

(ii) the number of the judges of all other courts, and their terms of appointment; and

(iii) the constitution and organisation of the said courts, the distribution of jurisdiction and business among the said courts and judges, and all matters of procedure.

37. Nothing in this constitution shall operate to invalidate the exercise of limited functions and powers of a judicial nature, in matters other than criminal matters, by any person or body of persons duly authorised by law to exercise such functions and powers, notwithstanding that such person or such body of persons is not a judge or a court appointed or established as such under this constitution.

### TRIAL OF OFFENCES

38. (1) No person shall be tried on any criminal charge save in due course of law.

(2) Minor offences may be tried by courts of summary jurisdiction.

(3) 1° Special courts may be established by law for the trial of offences in cases where it may be determined in accordance with such law that the ordinary courts are inadequate to secure the effective administration of justice and the preservation of public peace and order.

2° The constitution, powers, jurisdiction and procedure of such special courts shall be prescribed by law.

(4) 1° Military tribunals may be established for the trial of offences against military law alleged to have been committed by persons while subject to military law and also to deal with a state of war or armed rebellion.

2° A member of the defence forces not on active service shall not be tried by any court-martial or other military tribunal for an offence cognisable by the civil courts unless such offence is within the jurisdiction of any court-martial or other military tribunal under any law for the enforcement of military discipline.

(5) Save in the case of the trial of offences under section (2), section (3) or section (4) of this article no person shall be tried on any criminal charge without a jury.

(6) The provisions of articles 34 and 35 of this constitution shall not apply to any court or tribunal set up under section (3) or section (4) of this article.

39. Treason shall consist only in levying war against the State, or assisting any State or person or inciting or conspiring with any person to levy war against the State, or attempting by force of arms or other violent means to overthrow the organs of government established by this constitution, or taking part or being concerned

in or inciting or conspiring with any person to make or to take part or be concerned in any such attempt

## FUNDAMENTAL RIGHTS

### *Personal Rights*

40 (1) All citizens shall as human persons be held equal before the law

This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function

(2) 1° Titles of nobility shall not be conferred by the State

2° No title of nobility or of honour may be accepted by any citizen except with the prior approval of the Government

(3) 1° The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen

2° The State shall in particular, by its laws protect as best it may from unjust attack and in the case of injustice done, vindicate the life person, good name and property rights of every citizen

(4) 1° No citizen shall be deprived of his personal liberty save in accordance with law

2° Upon complaint being made by or on behalf of any person that he is being unlawfully detained, the High Court and any and every judge thereof shall forthwith enquire into the same and may make an order requiring the person in whose custody such person shall be detained to produce the body of the person so detained before such court or judge without delay and to certify in writing as to the cause of the detention and such court or judge shall thereupon order the release of such person unless satisfied that he is being detained in accordance with the law

3° Nothing in this section, however, shall be invoked to *prohibit control or interfere with any act of the defence forces* during the existence of a state of war or armed rebellion

(5) The dwelling of every citizen is inviolable and shall not be forcibly entered save in accordance with law

(6) 1° The State guarantees liberty for the exercise of the following rights, subject to public order and morality —

(i) The right of the citizens to express freely their convictions and opinions

The education of public opinion being, however, a matter of such grave import to the common good, the State shall endeavour to ensure that organs of public opinion, such as the radio, the press the cinema, while preserving their rightful liberty of expression including criticism of Government policy, shall not be used to undermine public order or morality or the authority of the State

The publication or utterance of blasphemous, seditious or indecent matter is an offence which shall be punishable in accordance with law.

(ii) The right of the citizens to assemble peaceably and without arms.

Provision may be made by law to prevent or control meetings which are determined in accordance with law to be calculated to cause a breach of the peace or to be a danger or nuisance to the general public and to prevent or control meetings in the vicinity of either House of the Oireachtas.

(iii) The rights of the citizens to form associations and unions.

Laws, however, may be enacted for the regulation and control in the public interest of the exercise of the foregoing right.

2° Laws regulating the manner in which the right of forming associations and unions and the right of free assembly may be exercised shall contain no political, religious or class discrimination.

### *The Family*

41. (1) 1° The State recognises the family as the natural primary and fundamental unit group of society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.

2° The State, therefore, guarantees to protect the family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the nation and the State.

(2) 1° In particular, the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved.

2° The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.

(3) 1° The State pledges itself to guard with special care the institution of marriage, on which the family is founded, and to protect it against attack.

2° No law shall be enacted providing for the grant of a dissolution of marriage.

3° No person whose marriage has been dissolved under the civil law of any other State but is a subsisting valid marriage under the law for the time being in force within the jurisdiction of the Government and Parliament established by this constitution shall be capable of contracting a valid marriage within that jurisdiction during the lifetime of the other party to the marriage so dissolved.

### *Education*

42. (1) The State acknowledges that the primary and natural educator of the child is the family and guarantees to respect the inalienable right and duty of parents to provide, according to their

means, for the religious and moral, intellectual, physical and social education of their children

(2) Parents shall be free to provide this education in their homes or in private schools or in schools recognised or established by the State

(3) 1° The State shall not oblige parents in violation of their conscience and lawful preference to send their children to schools established by the State, or to any particular type of school designated by the State

2° The State shall, however, as guardian of the common good require in view of actual conditions that the children receive a certain minimum education moral, intellectual and social

(4) The State shall provide for free primary education and shall endeavour to supplement and give reasonable aid to private and corporate educational initiative, and, when the public good requires it, provide other educational facilities or institutions with due regard, however, for the rights of parents, especially in the matter of religious and moral formation

(5) In exceptional cases, where the parents for physical or moral reasons fail in their duty towards their children, the State as guardian of the common good, by appropriate means shall endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child

### *Private Property*

43 (1) 1° The State acknowledges that man, in virtue of his rational being, has the natural right, antecedent to positive law, to the private ownership of external goods

2° The State accordingly guarantees to pass no law attempting to abolish the right of private ownership or the general right to transfer, bequeath and inherit property

(2) 1° The State recognises, however, that the exercise of the rights mentioned in the foregoing provisions of this article ought, in civil society, to be regulated by the principles of social justice

2° The State, accordingly, may as occasion requires delimit by law the exercise of the said rights with a view to reconciling their exercise with the exigencies of the common good

### *Religion*

44 (1) 1° The State acknowledges that the homage of public worship is due to Almighty God. It shall hold His Name in reverence and shall respect and honour religion

2° The State recognises the special position of the Holy Catholic Apostolic and Roman Church as the guardian of the faith professed by the great majority of the citizens

3° The State also recognises the Church of Ireland, the Presbyterian Church in Ireland, the Methodist Church in Ireland, the Religious Society of Friends in Ireland, as well as the Jewish congregations and the other religious denominations existing in Ireland at the date of the coming into operation of this constitution.

(2) 1° Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen.

2° The State guarantees not to endow any religion.

3° The State shall not impose any disabilities or make any discrimination on the ground of religious profession, belief or status.

4° Legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations, nor be such as to affect prejudicially the right of any child to attend a school receiving public money without attending religious instruction at that school.

5° Every religious denomination shall have the right to manage its own affairs, own, acquire and administer property, movable and immovable, and maintain institutions for religious or charitable purposes.

6° The property of any religious denomination or any educational institution shall not be diverted save for necessary works of public utility and on payment of compensation.

## DIRECTIVE PRINCIPLES OF SOCIAL POLICY

45. The principles of social policy set forth in this article are intended for the general guidance of the Oireachtas. The application of those principles in the making of laws shall be the care of the Oireachtas exclusively, and shall not be cognisable by any court under any of the provisions of this constitution.

(1) The State shall strive to promote the welfare of the whole people by securing and protecting as effectively as it may a social order in which justice and charity shall inform all the institutions of the national life.

(2) The State shall, in particular, direct its policy towards securing—

(i) that the citizens (all of whom, men and women equally, have the right to an adequate means of livelihood) may through their occupations find the means of making reasonable provision for their domestic needs ;

(ii) that the ownership and control of the material resources of the community may be so distributed amongst private individuals and the various classes as best to subserve the common good ;

(iii) that, especially, the operation of free competition shall not be allowed so to develop as to result in the concentration of the ownership or control of essential commodities in a few individuals to the common detriment ;



(iv) that in what pertains to the control of credit the constant and predominant aim shall be the welfare of the people as a whole.

(v) that there may be established on the land in economic security as many families as in the circumstances shall be practicable

(3) 1° The State shall favour and where necessary, supplement private initiative in industry and commerce

2° The State shall endeavour to secure that private enterprise shall be so conducted as to ensure reasonable efficiency in the production and distribution of goods and as to protect the public against unjust exploitation

(4) 1° The State pledges itself to safeguard with especial care the economic interests of the weaker sections of the community and where necessary to contribute to the support of the infirm the widow the orphan and the aged

2° The State shall endeavour to ensure that the strength and health of workers men and women and the tender age of children shall not be abused and that citizens shall not be forced by economic necessity to enter vocations unsuited to their sex age or strength

46 (1) Any provision of this constitution may be amended whether by way of variation addition or repeal in the manner provided by this article

(2) Every proposal for an amendment of this constitution shall be initiated in Dail Eireann as a bill and shall upon having been passed or deemed to have been passed by both Houses of the Oireachtas be submitted by referendum to the decision of the people in accordance with the law for the time being in force relating to the referendum

(3) Every such bill shall be expressed to be An Act to amend the Constitution

(4) A bill containing a proposal or proposals for the amendment of this constitution shall not contain any other proposal

(5) A bill containing a proposal for the amendment of this constitution shall be signed by the President forthwith upon his being satisfied that the provisions of this article have been complied with in respect thereof and that such proposal has been duly approved by the people in accordance with the provisions of section (1) of article 47 of this constitution and shall be duly promulgated by the President as a law

## THE REFERENDUM

47 (1) Every proposal for an amendment of this constitution which is submitted by referendum to the decision of the people

shall, for the purpose of article 46 of this constitution, be held to have been approved by the people, if, upon having been so submitted, a majority of the votes cast at such referendum shall have been cast in favour of its enactment into law.

(2) 1° Every bill and every proposal, other than a proposal to amend the constitution, which is submitted by referendum to the decision of the people shall be held to have been vetoed by the people if a majority of the votes cast at such referendum shall have been cast against its enactment into law and if the votes so cast against its enactment into law shall have amounted to not less than thirty-three and one-third per cent. of the voters on the register.

2° Every bill and every proposal, other than a proposal to amend the constitution, which is submitted by referendum to the decision of the people shall for the purposes of article 27 hereof be held to have been approved by the people unless vetoed by them in accordance with the provisions of the foregoing sub-section of this section.

(3) Every citizen who has the right to vote at an election for members of Dáil Eireann shall have the right to vote at a referendum.

(4) Subject as aforesaid, the referendum shall be regulated by law.

## REPEAL OF CONSTITUTION OF SAORSTÁT EIREANN AND CONTINUANCE OF LAWS

48. The constitution<sup>(1)</sup> of Saorstát Eireann in force immediately prior to the date of the coming into operation of this constitution and "The Constitution of the Irish Free State (Saorstát Eireann) Act, 1922,"<sup>(2)</sup> in so far as that Act or any provision thereof is then in force, shall be and are hereby repealed as on and from that date.

49. (1) All powers, functions, rights and prerogatives whatsoever exercisable in or in respect of Saorstát Eireann immediately before the 11th day of December, 1936, whether in virtue of the constitution then in force or otherwise, by the authority in which the executive power of Saorstát Eireann was then vested are hereby declared to belong to the people.

(2) It is hereby enacted that, save to the extent to which provision is made by this constitution or may hereafter be made by law for the exercise of any such power, function, right or prerogative by any of the organs established by this constitution, the said powers, functions, rights and prerogatives shall not be exercised or be capable of being exercised in or in respect of the State save only by or on the authority of the Government.

(1) *State Papers*, Vol. CXVI, page 262, as subsequently amended.

(2) *Ibid.*, Vol. CXVI, page 262.

(3) The Government shall be the successors of the Government of Saorstát Éireann as regards all property, assets, rights and liabilities

50 (1) Subject to this constitution and to the extent to which they are not inconsistent therewith, the laws in force in Saorstát Éireann immediately prior to the date of the coming into operation of this constitution shall continue to be of full force and effect until the same or any of them shall have been repealed or amended by enactment of the Oireachtas

(2) Laws enacted before, but expressed to come into force after, the coming into operation of this constitution, shall unless otherwise enacted by the Oireachtas, come into force in accordance with the terms thereof

### TRANSITORY PROVISIONS

51 (1) Notwithstanding anything contained in article 46 hereof, any of the provisions of this constitution, except the provisions of the said article 46 and this article, may, subject as hereinafter provided, be amended by the Oireachtas, whether by way of variation, addition or repeal, within a period of 3 years after the date on which the first President shall have entered upon his office

(2) A proposal for the amendment of this constitution under this article shall not be enacted into law if, prior to such enactment, the President, after consultation with the Council of State, shall have signified in a message under his hand and Seal addressed to the Chairman of each of the Houses of the Oireachtas that the proposal is in his opinion a proposal to effect an amendment of such a character and importance that the will of the people thereon ought to be ascertained by referendum before its enactment into law

(3) The foregoing provisions of this article shall cease to have the force of law immediately upon the expiration of the period of 3 years referred to in section (1) hereof

(4) This article shall be omitted from every official text of this constitution published after the expiration of the said period

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62 This constitution shall come into operation—

(i) on the day following the expiration of a period of 180 days after its approval by the people signified by a majority of the votes cast at a plebiscite thereon held in accordance with law, or

(ii) on such earlier day after such approval as may be fixed by a resolution of Dail Éireann elected at the general election the polling for which shall have taken place on the same day as the said plebiscite.

63. A copy of this constitution signed by the Taoiseach, the Chief Justice, and the Chairman of Dáil Eireann, shall be enrolled for record in the office of the Registrar of the Supreme Court, and such signed copy shall be conclusive evidence of the provisions of this constitution. In case of conflict between the Irish and the English texts, the Irish text shall prevail.

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## NEWFOUNDLAND

- 1 Letters Patent constituting the Office of Governor and Commander-in-Chief —Westminster, March 28, 1876

Text in *Statutory Rules and Orders* revised to December 31, 1903  
Vol IX Newfoundland page 1

*Amendment*

## LETTERS PATENT

Westminster, July 17, 1905

Text in *Statutory*

*Rules and Orders*, 1905 Part II, page 1450

- 2 Royal Instructions to the Governor and Commander-in-Chief —March 28, 1876
- 3 Act of the Parliament of the United Kingdom to empower His Majesty to issue Letters Patent making Provision for the Administration —December 21, 1933  
Text in *State Papers*, Vol CXXXVI, page 279
- 4 Letters Patent suspending the Letters Patent, 1876 (as modified 1905) and constituting a Commission of Government —Westminster, January 30, 1934  
Text in *Statutory Rules and Orders*, 1934 Vol II, page 774
- 5 Royal Instructions to the Governor and Commander-in-Chief —St James's, January 30, 1934

- 1 Letters Patent, 1876 (as amended 1905)

*Victoria by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith To all to whom these presents shall come, Greeting*

Whereas we did, by certain Letters Patent under the Great Seal of our United Kingdom of Great Britain and Ireland, bearing date at Westminster the 6th day of September, 1869 in the 33rd year of our reign, constitute and appoint our trusty and well beloved Colonel Stephen John Hill (now Sir Stephen John Hill Knight Commander of our most Distinguished Order of Saint Michael and Saint George), Companion of our most Honourable Order of the Bath, to be, during our pleasure, our Governor and Commander-in-Chief in and over our Island of Newfoundland and its dependencies And whereas we are desirous of making effectual and permanent provision for the office of Governor and Commander-in-Chief in and over our said Island of Newfoundland and its dependencies without making new Letters Patent on each demise of

the said office : Now know ye that we have revoked and determined, and by these presents do revoke and determine, the said recited Letters Patent, and every clause, article, and thing therein contained: And further know ye, that we, of our special grace, certain knowledge, and mere motion, have thought fit to constitute, order, and declare, and do by these presents constitute, order, and declare, that there shall be a Governor and Commander-in-Chief (hereinafter called "our said Governor") in and over our Island of Newfoundland, and the islands adjacent, and all the coast of Labrador<sup>(1)</sup> from the entrance of Hudson's Straits to a line to be drawn due north and south, from Anse Sablon on the said coast to the 52nd degree of north latitude, and all the islands adjacent to that part of the said coast of Labrador, as also of all forts and garrisons erected and established, or which shall be erected or established within or on the islands and coast aforesaid (which said islands and coast, together with the Island of Newfoundland, are hereinafter referred to as "our said Colony"), and that the person who shall fill the said office of Governor shall be, from time to time, appointed by Commission under our Sign Manual and Signet. And we do hereby authorise and command our said Governor to do and execute in due manner all things that shall belong to his said command, and to the trust we have reposed in him, according to the several powers and authorities granted or appointed him by virtue of these present Letters Patent, and of such Commission as may be issued to him under our Sign Manual and Signet, and according to such Instructions as may from time to time be given to him under our Sign Manual and Signet, or by our Order in our Privy Council, or by us through one of our Principal Secretaries of State, and according to such laws and ordinances as are or shall hereafter be in force in our said Colony.

2. And we do hereby declare our pleasure to be that there shall be an Executive Council for our said Colony, and that the said Council shall consist of such persons as are now or may at any time be declared by any law enacted by the Legislature of our said Colony to be members of our said Council, and of such other persons as our said Governor shall, from time to time, in our name and on our behalf, but subject to any law as aforesaid, appoint under the Public Seal to be members of our said Council.

3. And we do hereby declare our pleasure to be that there shall be within our said Colony a Legislative Council which shall consist of such members as at or immediately before the publication of these presents were members of our said Council and of such and so many other members as shall hereafter be from time to time nominated and appointed by us under our Sign Manual and Signet, or provisionally appointed by our said Governor until our pleasure

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<sup>(1)</sup> The boundary of Labrador was defined by a judgment of the Judicial Committee of the Privy Council dated March 1, 1927.

thereon shall be known. Provided, nevertheless, and we do hereby declare our pleasure to be, that the total number of the members of the said Legislative Council for the time being resident within our said Colony shall not at any time, by such provisional appointments, be raised to a greater number in the whole than 15. Provided also that every member of our said Council shall hold his place therein during our pleasure and shall be removable by any instruction or warrant issued by us under our Sign Manual and Signet, and with the advice of our Privy Council

4 And we do authorise and empower our said Governor, with the advice and consent of our said Executive Council, by writs issued in our name, to summon and call together the General Assembly of our said Colony, and also from time to time, in the lawful and accustomed manner, to prorogue the Legislative Council and the House of Assembly of our said Colony, and from time to time to dissolve the said House of Assembly

5 And we do further authorise and empower our said Governor, with the advice and consent of the said Legislative Council and Assembly of our said Colony to make laws for the public peace, welfare, and good government of our said Colony

6 [Identical, *mutatis mutandis*, with clause 2 of the Letters Patent in respect of Canada see page 52]

7 And we do further authorise and empower our said Governor, in our name and on our behalf, to make and execute, under the said Seal, grants and dispositions of any lands which may be lawfully granted or disposed of by us within our said Colony.

8 [Identical, *mutatis mutandis*, with clause 3 of the Letters Patent in respect of Canada see page 52]

9 And we do further authorise and empower our said Governor, as he shall see occasion, in our name and on our behalf, when any crime has been committed within our said Colony, or for which the offender may be tried therein, to grant a pardon to any accomplice not being the actual perpetrator of such crime, who shall give such information and evidence as shall lead to the apprehension and conviction of the principal offender, and further, to grant to any offender convicted of any crime in any court, or before any judge, justice or magistrate within our said Colony, a pardon either free or subject to lawful conditions, or any respite of the execution of the sentence of any such offender, for such period as to our said Governor may seem fit, and to remit any fines, penalties, or forfeitures, which may become due and payable to us. Provided always that our said Governor shall in no case make it a condition of any pardon or remission of sentence that the offender shall be banished from, or shall absent himself from our said Colony

10 And we do further authorise and empower our said Governor, so far as we lawfully may, upon sufficient cause to him appearing,

to remove from his office, or to suspend from the exercise of the same, any person exercising any such office or place within our said Colony, under or by virtue of any Commission or warrant granted, or which may be granted, by us in our name, or under our authority.

11. In the event of the death, incapacity, removal, or absence of our said Governor out of our said Colony, all and every the powers and authorities herein granted to him shall, until our further pleasure is signified therein, be, and the same are hereby vested in such person as may be appointed by us under our Sign Manual and Signet, to be our Lieutenant-Governor of our said Colony, or if there shall be no such Lieutenant-Governor in our said Colony, then in such person or persons as may be appointed by us under our Sign Manual and Signet to administer the Government of the same; and in case there shall be no person or persons within our said Colony so appointed by us, then in the President for the time being of the Legislative Council of our said Colony.

Provided that, in the event of our said Governor having occasion to be temporarily absent for a short period from the seat of Government, or from our said Colony for the purpose of visiting our Dominion of Canada on public business, he may in every such case by an instrument under the Public Seal of our said Colony, constitute and appoint our Lieutenant-Governor, or if there be no such officer or if such officer be absent or unable to act, then any other person, to be his deputy during such temporary absence, and in that capacity to exercise, perform, and execute for and on his behalf during such absence, but no longer, all such powers and authorities vested in our said Governor, by these our Letters Patent, as shall in and by such instrument be specified and limited, but no others. Every such deputy shall conform to and observe all such instructions as our said Governor shall from time to time address to him for his guidance. Provided, nevertheless, that by the appointment of a deputy as aforesaid, the power and authority of our said Governor shall not be abridged, altered, or in any way affected, otherwise than we may at any time hereafter think proper to direct. Provided further that if any such deputy shall have been duly appointed it shall not be necessary during the continuance in office of such deputy for any person to assume the Government of our said Colony as Administrator thereof.

12. And we do hereby require and command all our officers and Ministers, civil and military, and all other inhabitants of our said Colony, to be obedient, aiding, and assisting unto our said Governor, or, in the event of his death, incapacity, or absence, to such person or persons as may from time to time, under the provisions of these our Letters Patent, administer the Government of our said Colony.

13-14. [Identical, *mutatis mutandis*, with clauses 9-10 of the Letters Patent in respect of Australia: see page S6.]



In witness whereof we have caused these our Letters to be made Patent Witness ourself at Westminster, the 28th day of March, in the 39th year of our reign

By warrant under the Queen's Sign Manual

C ROMILLY

## 2 Royal Instructions, 1876

VICTORIA R

Whereas by certain Letters Patent bearing even date<sup>(1)</sup> here with, we have constituted, ordered and declared that there shall be a Governor and Commander-in Chief (hereinafter called "our said Governor") in and over our Island of Newfoundland and its dependencies (hereinafter called "our said Colony") And we have thereby authorised and commanded our said Governor to do and execute in due manner all things that shall belong to his said command, and to the trust we have reposed in him, according to the several powers and authorities granted or appointed him by virtue of the said Letters Patent and of the Commission to be issued to him under our Sign Manual and Signet, and according to such Instructions as may from time to time be given to him, under our Sign Manual and Signet, or by our Order in our Privy Council, or by us through one of our Principal Secretaries of State, and according to such laws and ordinances as are or shall hereafter be in force in our said Colony Now, therefore, we do by these our Instructions under our Sign Manual and Signet declare our pleasure to be that our said Governor for the time being shall with all due solemnity cause our Commission under our Sign Manual and Signet, appointing our said Governor for the time being, to be read and published in the presence of the Chief Justice of our said Colony for the time being, and of the members of our Executive Council thereof, and we do further declare our pleasure to be that our said Governor and every other officer appointed to administer the Government of our said Colony shall take the oath of allegiance in the form provided by an Act passed in the session holden in the 31st and 32nd years of our reign, intituled "An Act to amend the Law relating to Promissory Oaths"<sup>(2)</sup>, and likewise that he or they take the usual oath for the due execution of the office and trust of our Governor and Commander-in-Chief in and over our said Colony, and for the due and impartial administration of justice, which said oaths the Chief Justice for the time being of our said Colony, or, in his absence, or in the event of his being otherwise incapacitated, the senior judge then present, or,

(1) Page 222

(2) 31 & 32 Vict., c. 72.

failing such judge, the senior member present of our said Executive Council, shall and he is hereby required to tender and administer unto him or them.

2. [Practically identical, *mutatis mutandis*, with the same clause of the Royal Instructions in respect of Canada : see page 55.]

3. And we do require our said Governor to communicate forthwith to our Executive Council for our said Colony these our Instructions, and likewise all such others from time to time as he shall find convenient for our service to be imparted to them.

4. And we do hereby direct and enjoin that our said Executive Council shall not proceed to the despatch of business unless duly summoned by authority of our said Governor, and unless three members at the least (exclusive of himself or the member presiding) be present and assisting throughout the whole of the meetings at which any such business shall be despatched.

5. And we do further direct and enjoin that our said Governor do attend and preside at the meetings of our said Executive Council, unless when prevented by some necessary or reasonable cause ; and that in his absence such member as may be appointed by him in that behalf, or, in the absence of any such member, the senior member of the said Executive Council actually present shall preside at all such meetings, the seniority of the members of the Council being regulated according to the order of their respective appointments as members of our said Council.

6. And we do further direct and enjoin that a full and exact journal or minute be kept of all the deliberations, acts, proceedings, votes, and resolutions of our said Executive Council, and that at each meeting of the said Council the minutes of the last meeting be read over, confirmed, or amended, as the case may require, before proceeding to the despatch of any other business. And we do further direct that twice in each year a full transcript of all the minutes of the said Council for the preceding half year be transmitted to us through one of our Principal Secretaries of State.

7. And we do further direct and enjoin that, in the execution of the powers and authorities committed to our said Governor by our said Letters Patent, he shall in all cases consult with our said Executive Council, excepting only in cases which may be of such a nature that, in his judgment, our service would sustain material prejudice by consulting our Council thereupon, or when the matters to be decided shall be too unimportant to require their advice, or too urgent to admit of their advice being given by the time within which it may be necessary for him to act in respect of any such matters. Provided that in all such urgent cases he shall subsequently, and at the earliest practicable period, communicate to the said Executive Council the measures which he may so have adopted, with the reasons thereof.

8 And we do authorise our said Governor, in his discretion, and if it shall in any case appear right to act in the exercise of the power committed to him by our said Letters Patent, in opposition to the advice which may in any such case be given to him by the members of our said Executive Council Provided, nevertheless, that in every such case he shall fully report to us by the first convenient opportunity such proceeding with the grounds and reasons thereof

9 And whereas we have by our said Letters Patent provided that the Legislative Council of our said Colony shall be constituted in the manner therein appointed Now we do declare our pleasure to be that five members of the said Legislative Council shall be a *quorum* for the despatch of the business thereof

10 And we do authorise and empower our said Governor, from time to time, by an instrument under the Public Seal of our said Colony to appoint one member of the said Legislative Council to preside therein and to remove him and appoint another in his stead

11 And we do confirm all standing rules and orders heretofore made by our authority for ensuring punctuality of attendance of the members of the said Legislative Council, and for the prevention of meetings of the said Council being held without convenient notice to the several members thereof, and for maintaining order and method in the despatch of business and in the conduct of all debates in the said Council, and we do authorise and empower the said Legislative Council to make such other and further rules and orders as may to them appear requisite for the above mentioned purposes not being repugnant to these our Instructions, or to any other Instructions which our said Governor may receive from us

12 And we do further direct and enjoin that minutes shall be regularly kept of the proceedings of the said Legislative Council and that at each meeting of the said Council the minutes of the last preceding meeting be read over, confirmed or amended, as the case may require before proceeding to the despatch of any other business And we do further direct and enjoin that our said Governor shall transmit fair copies of the journals and minutes of the proceedings of the legislative bodies of our said Colony, which he is to require from the clerks or other proper officers in that behalf of the said legislative bodies

13 And whereas we have empowered our said Governor, by our said Letters Patent to summon and call together the General Assembly of our said Colony, we do further direct and enjoin that the persons thereupon duly elected to be members of the said Assembly shall, before their sitting, take the said oath of allegiance, which oath he shall commission fit persons, under the Seal of our said Colony, to tender and administer unto them, and until the same shall be so taken, no person shall be capable of sitting though elected

14. And in the enactment of laws within our said Colony, we do direct and enjoin that our said Governor observes, as far as may be practicable, the following rules and instructions (that is to say) :—

15. The style of enacting such laws shall be by “ The Governor, Lieutenant-Governor, or Officer administering the Government (as the case may be), Council and Assembly,” and no other.

16. In the passing of all laws, each different matter is to be provided for by a different law, without intermixing in one and the same law such things as have no proper relation to each other, and no clause is to be inserted in or annexed to any law which shall be foreign to what the title of such law imports, and no perpetual clause is to be part of any temporary law.

17. Our said Governor is not to assent in our name to any bill of any of the classes hereinafter specified, that is to say :—

(1) Any bill for the divorce of persons joined together in holy matrimony.

(2) Any bill whereby any grant of land or money or other donation or gratuity may be made to himself.

(3) Any bill whereby any paper or other currency may be made a legal tender, except the coin of the realm or other gold or silver coin.

(4) Any bill imposing differential duties.

(5) Any bill the provisions of which shall appear inconsistent with obligations imposed upon us by treaty.

(6) Any bill interfering with the discipline or control of our forces in our said Colony by land and sea.

(7) Any bill of an extraordinary nature and importance whereby our prerogative, or the rights and property of our subjects not residing in our said Colony, or the trade and shipping of the United Kingdom and its dependencies, may be prejudiced.

(8) Any bill containing provisions to which our assent has been once refused, or which have been disallowed by us :—

Unless such bill shall contain a clause suspending the operation of such bill until the signification in our said Colony of our pleasure thereupon, or unless our said Governor shall have satisfied himself that an urgent necessity exists requiring that such bill be brought into immediate operation, in which case he is authorised to assent in our name to such bill unless the same shall be repugnant to the law of England, or inconsistent with any obligations imposed upon us by treaty. But he is to transmit to us, by the earliest opportunity, the bill so assented to, together with his reasons for assenting thereto.

18. And we do further direct and enjoin our said Governor to transmit to us, through one of our Principal Secretaries of State, a transcript in duplicate of every law which has been assented to by him in our name, together with a marginal abstract thereof duly authenticated under the Public Seal of our said Colony, and that

such transcript shall be accompanied with such explanatory observations as may be required to exhibit the reasons and occasion for proposing such laws, and that in case any such law shall at any time be disallowed, and so signified by us, our heirs and successors under our or their Sign Manual and Signet, or by Order of our or their Privy Council unto him, then such law as shall be so disallowed shall from thenceforth cease, determine, and become utterly void and of none effect, anything to the contrary thereof notwithstanding

19 And whereas we have by our said Letters Patent authorised and empowered our said Governor as he shall see occasion, in our name and on our behalf, to grant to any offender convicted of any crime in any court, or before any judge, justice or magistrate within our said Colony, a pardon, either free or subject to lawful conditions, Now we do hereby direct and enjoin our said Governor to call upon the judge who presided at the trial of any offender who shall have been condemned to suffer death by the sentence of any court within our said Colony to make to our said Governor a written report of the case of such offender, and such report of the said judge shall by our said Governor be taken into consideration at the first meeting thereafter which may be conveniently held of our said Executive Council where the said judge may be specially summoned to attend, and our said Governor shall not pardon or reprieve any such offender as aforesaid, unless it shall appear to him expedient so to do, upon receiving the advice of our Executive Council therein, but in all such cases he is to decide either to extend or to withhold a pardon or reprieve according to his own deliberate judgment, whether the members of our said Executive Council concur therein or otherwise entering, nevertheless, on the minutes of the said Council a minute of his reasons at length, in case he should decide any such questions in opposition to the judgment of the majority of the members thereof

20 And we do further direct and enjoin that all commissions granted by our said Governor to any person or persons to be judges, justices of the peace, or other officers, shall, unless otherwise provided by law, be granted during pleasure only

21 And whereas our said Governor will receive through one of our Principal Secretaries of State a book of tables in blank, commonly called "the Blue Book," to be annually filled up with certain returns relative to the revenue and expenditure, militia public works, legislation, civil establishment, pensions, population, schools, course of exchange, imports and exports, agricultural produce, manufactures and other matters in the said "Blue Book" more particularly specified with reference to the state and condition of our said Colony. Now we do hereby direct and enjoin that all such returns be accurately prepared, and punctually transmitted to us from year to year through one of our Principal Secretaries of State

22. And whereas great prejudice may happen to our service and to the security of our said Colony by the absence therefrom of our said Governor, he shall not upon any pretence whatsoever quit our said Colony without having first obtained leave from us for so doing under our Sign Manual and Signet, or through one of our Principal Secretaries of State.

V.R.

### 3. Act of Parliament, 1933.

[24 Geo. V, c. 2.—December 21, 1933.]

*Whereas an address has been presented to His Majesty by the Legislative Council and House of Assembly of Newfoundland in the terms set forth in the first schedule to this Act:*

*And whereas the Governor, the Legislative Council and House of Assembly of Newfoundland have passed an Act entitled "The Loan Act, 1933," which Act is in this Act referred to as "The Loan Act," and is set out in the second schedule to this Act:*

*Now, therefore, be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—*

1. (1) It shall be lawful for His Majesty by any Letters Patent under the Great Seal of the Realm to make provision for the suspension of the operation of the existing Letters Patent dated the 28th day of March, 1876,<sup>(1)</sup> constituting the office of Governor of Newfoundland, and of the existing Letters Patent dated the 17th day of July, 1905,<sup>(1)</sup> regarding the absence of the Governor, and to make provision for the administration of Newfoundland during the period while the operation of the existing Letters Patent is suspended on the basis of the recommendations of the Royal Commission referred to in the said address.

(2) Any Letters Patent issued under the foregoing sub-section may contain a provision reserving power to His Majesty to revoke or amend those Letters Patent, but before the passing of any further Letters Patent terminating the suspension of the operation of the existing Letters Patent or making any such altered provision for the administration of Newfoundland during the period while the operation of the existing Letters Patent is suspended as would empower the Governor to act in the administration of Newfoundland otherwise than on the advice of a Commission of Government constituted in accordance with the said recommendations, a draft of the further Letters Patent shall be laid before each House of Parliament for a period of 21 days during the session of Parliament and,

if an address is presented to His Majesty by either House of Parliament against any of the provisions contained in the draft, no further proceedings shall be taken on the draft, without prejudice to the making of a new draft

Provided that in reckoning any such period of 21 days as aforesaid, no account shall be taken of any time during which both Houses of Parliament are adjourned for more than 4 days

\* \* \*

## SCHEDULES

### *First Schedule*

*Address presented to His Majesty by the Legislative Council and House of Assembly of Newfoundland*

TO THE KING'S MOST EXCELLENT MAJESTY

Most Gracious Sovereign

We Your Majesty's most dutiful and loyal subjects, the Legislative Council and Assembly of Newfoundland, humbly approach Your Majesty praying that—

Whereas in the present emergency Your Majesty's Island of Newfoundland is unable from its own resources to defray the interest charges on the public debt

And whereas the Royal Commission appointed by Your Majesty's warrant bearing the date the 17th day of February, 1933 to examine into the future of Newfoundland has recommended that for the time being until such time as the Island may become self supporting again the administration of the Island should be vested in His Excellency the Governor acting on the advice of a specially created Commission of Government and that during such period Your Majesty's Government in the United Kingdom should assume general responsibility for the finances of Newfoundland and should, in particular make such arrangements as may be deemed just and practicable with a view to securing to Newfoundland a reduction in the present burden of public debt

And whereas Your Majesty's Government in the United Kingdom have signified their readiness subject to the approval of Parliament to accept the recommendations of the Royal Commission and have made detailed proposals for carrying those recommendations into effect

Now, therefore, Your Majesty may be graciously pleased to suspend the Letters Patent under the Great Seal bearing the date at Westminster the 28th day of March, 1876, and Letters Patent under the Great Seal bearing the date at Westminster the 17th day of

July, 1905, and to issue new Letters Patent which would provide for the administration of the Island, until such time as it may become self-supporting again, on the basis of the recommendations which are contained in the report of the Royal Commission and of which a summary is set out in the annex hereto :

And further that Your Majesty may be graciously pleased to cause to be laid before the Parliament of the United Kingdom at its present session such a measure as may enable them to be given immediate effect.

### *Annex*

*Extract from Report of Royal Commission appointed by His Majesty's Warrant bearing date the 17th day of February, 1933*

We therefore recommend that the Newfoundland Government, recognising that it is impossible for the Island to surmount unaided the unprecedented difficulties that now confront it, should make an immediate appeal for the sympathetic co-operation of Your Majesty's Government in the United Kingdom in the adoption and execution of a joint plan of reconstruction, of which the following would be the main features :—

(a) The existing form of government would be suspended until such time as the Island may become self-supporting again.

(b) A special Commission of Government would be created which would be presided over by His Excellency the Governor, would be vested with full legislative and executive authority, and would take the place of the existing Legislature and Executive Council.

(c) The Commission of Government would be composed of six members, exclusive of the Governor, three of whom would be drawn from Newfoundland and three from the United Kingdom.

(d) The Government Departments in the Island would be divided into six groups. Each group would be placed in the charge of a member of the Commission of Government, who would be responsible for the efficient working of the Departments in the group, and the Commission would be collectively responsible for the several Departments.

(e) The proceedings of the Commission of Government would be subject to supervisory control by Your Majesty's Government in the United Kingdom, and the Governor-in-Commission would be responsible to the Secretary of State for Dominion Affairs in the United Kingdom for the good government of the Island.

(f) Your Majesty's Government in the United Kingdom would, for their part, assume general responsibility for the finances of the Island until such time as it may become self-supporting again, and would, in particular, make such arrangements as may be deemed just and practicable with a view to securing to Newfoundland a reduction in the present burden of the public debt.



(g) It would be understood that, as soon as the Island's difficulties are overcome and the country is again self-supporting, responsible government, on request from the people of Newfoundland, would be restored

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#### 4 Letters Patent, 1934

*George V, by the Grace of God of Great Britain, Ireland, and the British dominions beyond the Seas King, Defender of the Faith, Emperor of India To all to whom these presents shall come, Greeting*

*Whereas, by certain Letters Patent under the Great Seal bearing date at Westminster the 28th day of March, 1876,<sup>(1)</sup> Her Majesty Queen Victoria did constitute the office of Governor and Commander-in Chief in and over our Island of Newfoundland and its dependencies,*

*And whereas by further Letters Patent bearing the date at Westminster the 17th day of July, 1905,<sup>(2)</sup> His late Majesty King Edward VII did amend the aforesaid Letters Patent*

*And whereas we have received an address<sup>(3)</sup> from the Legislative Council and House of Assembly of the said Island praying that we may be graciously pleased to suspend the aforesaid Letters Patent and to issue new Letters Patent which would provide for the administration of the said Island, until such time as it may become self-supporting again, on the basis of the recommendations which are contained in the report of the Royal Commission appointed by us on the 17th day of February, 1933, and of which a summary is set out in the annex to the said address,*

*And whereas by an Act of the Parliament of our United Kingdom of Great Britain and Northern Ireland entitled "The Newfoundland Act, 1933,"<sup>(3)</sup> it was provided that it should be lawful for us by any Letters Patent under the Great Seal to make provision for the suspension of the operation of the aforesaid Letters Patent of the 28th March, 1876, and the 17th July, 1905, and to make provision for the administration of Newfoundland during the period whilst the operation of the aforesaid Letters Patent is suspended*

*Now know ye that we do hereby declare our will and pleasure to be that, as from the coming into effect of these our Letters Patent, the operation of the aforesaid Letters Patent of the 28th March, 1876, and the 17th July, 1905, shall be suspended pending the further declaration of our pleasure, without prejudice to anything lawfully done thereunder, and we do further ordain that, during the period whilst the operation*

(1) Page 222

(2) Page 232

(3) Page 231

*of the aforesaid Letters Patent is suspended, the following provisions shall be made for the administration of our Island of Newfoundland and its dependencies:—*

1. We do by these presents constitute, order and declare that there shall be a Governor and Commander-in-Chief (hereinafter called "our said Governor") in and over our Island of Newfoundland; and the islands adjacent; and all the coast of Labrador from a line drawn due north from the eastern boundary of the bay or harbour of Anse Sablon on the said coast to the 52nd degree of north latitude, and from thence westward along that parallel until it reaches the Romaine River and then northward along the left or east bank of that river and its head-waters to their source and from thence due north to the crest of the watershed or height of land there and from thence westward and northward along the crest of the watershed of the rivers flowing into the Atlantic Ocean until it reaches Cape Chidley; and all the islands adjacent to that part of the said coast of Labrador; as also of all forts and garrisons erected and established, or which shall be erected or established within or on the islands and coast aforesaid (which said islands and coast, together with the Island of Newfoundland, are hereinafter referred to as "our said Island"), and that the person who shall fill the said office of Governor shall be, from time to time, appointed by Commission under our Sign Manual and Signet. And we do hereby authorise and command our said Governor to do and execute in due manner all things that shall belong to his said command, and to the trust we have reposed in him, according to the several powers and authorities granted or appointed him by virtue of these present Letters Patent, or any Letters Patent amending the same, and of such Commission as may be or may have been issued to him under our Sign Manual and Signet, and according to such instructions as may from time to time be given to him under our Sign Manual and Signet, or by us through one of our Principal Secretaries of State, and according to such laws and ordinances as are or shall hereafter be in force in our said Island.

2. And we do hereby declare our pleasure to be that there shall be a Commission of Government for our said Island (hereinafter called "the said Commission") and that the said Commission shall consist of six persons appointed by us under our Sign Manual and Signet, of whom three shall be persons ordinarily resident in our said Island and three shall be persons ordinarily resident without our said Island. Every such person shall hold his place in the Commission during our pleasure.

3. Whenever any member of the said Commission shall by writing under his hand resign his place in the said Commission or shall die or be suspended from the exercise of his functions as a member of the said Commission or be absent from our said Island or be declared by the Governor to be incapable of exercising his functions as a member of the said Commission, the Governor may, by an instrument

under the Public Seal, appoint some person to be provisionally a member of the said Commission in the place of the member so resigning or dying or being suspended or being absent or declared incapable

Such person shall forthwith cease to be a member of the said Commission if his appointment is disallowed by us or if the member in whose place he was appointed shall be released from suspension or, as the case may be, shall return to our said Island or shall be declared by the Governor capable of again discharging his functions in the said Commission

The Governor shall without delay report to us, for our confirmation or disallowance, through one of our Principal Secretaries of State, every provisional appointment of any person as a member of the said Commission. Every such person shall hold his place in the Commission during our pleasure and the Governor may, by an instrument under the Public Seal, revoke any such appointment

4 And we do hereby direct and enjoin that the said Commission of Government shall not proceed to the despatch of business unless duly summoned by authority of our said Governor, and unless three members at the least (exclusive of himself or the member presiding) be present and assisting throughout the whole of the meetings at which any such business shall be despatched

5 And we do further direct and enjoin that our said Governor do attend and preside at the meetings of the said Commission of Government, unless when prevented by some necessary or reasonable cause, and that in his absence such member as may be elected to be vice-chairman by the said Commission from among the members of the said Commission who are persons ordinarily resident in our said Island shall preside at all such meetings

6 And we do further direct and enjoin that a full and exact journal or minute be kept of all the deliberations, acts, proceedings, votes and resolutions of the said Commission and that at each meeting ~~of the said Commission the minutes of the last meeting be read over,~~ confirmed, or amended, as the case may require, before proceeding to the despatch of any other business. And we do further direct that twice in each year a full transcript of all the minutes of the said Commission for the preceding half year be transmitted to us through one of our Principal Secretaries of State

7 And we do further authorise and empower our said Governor, with the advice and consent of the said Commission, to make laws for the peace, welfare and good government of our said Island, and any such law may amend, add to, alter or repeal any law passed by the Legislature heretofore subsisting in our said Island

8 And we do further direct and enjoin that the style of enacting such laws shall be by "The Governor, by and with the advice of the Commission of Government" and no other.

9. And we do further direct and enjoin that no bill, vote, resolution or address for the appropriation of any part of the public revenue or for imposing any tax or impost shall be passed or adopted by the said Commission unless such bill, vote, resolution or address have first been recommended by our said Governor.

10. And we do further direct and enjoin that all laws shall be enacted and all other matters coming before the said Commission shall be decided by unanimity or, if on any matter there be not unanimity, by a majority of the votes given and in the latter event our said Governor and each member of the Commission actually present shall each exercise one vote.

11. And we do further direct and enjoin that no law made by our said Governor with the advice and consent of the said Commission shall take effect until our said Governor shall have assented thereto in our name and shall have signed the same in token of such assent.

12. It shall be lawful for us, our heirs and successors, by Order of our or their Privy Council, to disallow any law within one year from the date of the Governor's assent thereto and such disallowance on being made known by the Governor by proclamation in the *Gazette*, shall annul the law from the day when the disallowance is so made known.

13. And we do further authorise and empower our said Governor to keep and use the Public Seal of our said Island for sealing all things whatsoever that shall pass the said Public Seal.

14. And we do further authorise and empower our said Governor, in our name and on our behalf, to make and execute, under the said Seal, grants and dispositions of any lands which may be lawfully granted or disposed of by us within our said Island.

15. And we do further authorise and empower our said Governor to constitute and appoint all such judges, justices of the peace and other necessary officers in our said Island as may be lawfully constituted or appointed by us.

16. And we do further authorise and empower our said Governor, as he shall see occasion in our name and on our behalf, when any crime has been committed within our said Island, or for which the offender may be tried therein, to grant a pardon to any accomplice, not being the actual perpetrator of such crime, who shall give such information and evidence as shall lead to the apprehension and conviction of the principal offender ; and further, to grant to any offender convicted of any crime in any court, or before any judge, justice or magistrate, within our said Island, a pardon, either free or subject to lawful conditions, or any respite of the execution of the sentence of any such offender, for such period as to our said Governor may seem fit, and to remit any fines, penalties, or

forfeitures, which may become due and payable to us. Provided always that our said Governor shall in no case make it a condition of any pardon or remission of sentence that the offender shall be banished from, or shall absent himself from our said Island.

17 And we do further authorise and empower our said Governor, so far as we lawfully may, to remove from his office, or to suspend from the exercise of the same, any person exercising any such office or place within our said Island, under or by virtue of any Commission or warrant granted, or which may be granted, by us in our name, or under our authority.

18 If the Governor shall be unable to administer the Government of our said Island by reason of any of the following causes namely, death, incapacity, removal or departure from the Island, our Lieutenant-Governor or if there shall be no such officer in the Island or if such officer shall be unable to administer the Government of the Island by reason of any of the causes aforesaid, then such person or persons as we may appoint, under our Sign Manual and Signet, shall during our pleasure, administer the Government of the Island with all the powers and authorities vested in our said Governor by these our Letters Patent according to the tenour of these our Letters Patent and according to our Instructions as aforesaid and the laws of our said Island.

19 In the event of our said Governor having occasion to be temporarily absent for a short period from the seat of Government, or from our said Island for the purpose of visiting our Dominion of Canada on public business, he may in every such case, by an instrument under the Public Seal of our said Island constitute and appoint our Lieutenant-Governor, or if there be no such officer or if such officer be absent or unable to act, then any other person, to be his deputy during such temporary absence, and in that capacity to exercise perform, and execute for and on his behalf during such absence but no longer, all such powers and authorities vested in our said Governor by these our Letters Patent, as shall in and by such instrument be specified and limited but no others. Every such deputy shall conform to and observe all such instructions as our said Governor shall from time to time address to him for his guidance. Provided, nevertheless, that by the appointment of a deputy as aforesaid, the power and authority of our said Governor shall not be abridged, altered, or in any way affected, otherwise than we may at any time hereafter think proper to direct. Provided further that if any such deputy shall have been duly appointed it shall not be necessary during the continuance in office of such deputy for any person to assume the Government of our said Island as Administrator thereof.

20 And we do hereby require and command all our officers, civil and military, and all other inhabitants of our said Island, to be

obedient, aiding, and assisting unto our said Governor, or, in the event of his death, incapacity, or absence, to such person or persons as may from time to time, under the provisions of these our Letters Patent, administer the Government of our said Island.

21. In the construction of these our Letters Patent the term "Governor" shall, unless inconsistent with the context, include every person for the time being administering the Government of our said Island.

22. And we do hereby reserve to ourselves, our heirs and successors, full power and authority from time to time to revoke, alter, or amend these our Letters Patent as to us or them shall seem meet.

23. And we do further direct and enjoin that these our Letters Patent shall be read and proclaimed at such place or places as our said Governor shall think fit within our said Island of Newfoundland, and shall come into operation on a day<sup>(1)</sup> to be fixed by our said Governor by proclamation in the *Official Gazette*.

In witness whereof we have caused these our Letters to be made Patent. Witness ourself at Westminster, the 30th day of January in the 24th year of our reign.

By warrant under the King's Sign Manual.

SCHUSTER.

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## 5. Royal Instructions, 1934.

GEORGE R.I.

Whereas by certain Letters Patent bearing even date<sup>(2)</sup> herewith we have constituted, ordered and declared that there shall be a Governor and Commander-in-Chief (hereinafter called "our said Governor") in and over our Island of Newfoundland and its dependencies (hereinafter called "our said Island"). And we have thereby authorised and commanded our said Governor to do and execute in due manner all things that shall belong to his said command, and to the trust we have reposed in him, according to the several powers and authorities granted or appointed him by virtue of the said Letters Patent and of the Commission to be issued to him under our Sign Manual and Signet, and according to such Instructions as may from time to time be given to him, under our Sign Manual and Signet, or by us through one of our Principal Secretaries of State, and according to such laws and ordinances as are or shall hereafter be in force in our said Island. Now, therefore, we do by these our Instructions under our Sign Manual and Signet, declare our pleasure to be that every person hereafter appointed to be our said Governor shall with all due solemnity cause our Commission under our Sign

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<sup>(1)</sup> February 16, 1934.

<sup>(2)</sup> Page 234.

Manual and Signet, appointing our said Governor for the time being, to be read and published in the presence of the Chief Justice of our said Island for the time being, and we do further declare our pleasure to be that every person hereafter appointed to be our said Governor and every other officer appointed to administer the Government of our said Island shall take the oath of allegiance in the form provided by an Act passed in the session holden in the 31st and 32nd years of the reign of Her Majesty Queen Victoria intituled "An Act to amend the Law relating to Promissory Oaths",<sup>(1)</sup> and likewise that he or they take the usual oath for the due execution of the office and trust of our Governor and Commander-in-Chief in and over our said Island, and for the due and impartial administration of justice, which said oaths the Chief Justice for the time being of our said Island, or, in his absence or in the event of his being otherwise incapacitated, the senior judge then present, or failing such judge the senior member present of the Commission of Government, shall and he is hereby required to tender and administer unto him or them.

2 [Practically identical, *mutatis mutandis*, with the same clause of the Royal Instructions in respect of Canada see page 55]

3 And we do require our said Governor to communicate forthwith to the Commission of Government for our said Island these our Instructions, and likewise all such others from time to time as he shall find convenient for our service to be imparted to them

4 And we do further direct and enjoin that, in the execution of the powers and authorities committed to our said Governor by our said Letters Patent, he shall in all cases consult with and act in accordance with the decision of the said Commission, excepting only in cases where, in his judgment, the matters to be decided shall be too unimportant to require their advice, or too urgent to admit of their advice being given by the time within which it may be necessary for him to act in respect of any such matters. Provided that in all such urgent cases he shall subsequently, and at the earliest practicable period, communicate to the said Commission the measures which he may so have adopted, with the reasons thereof

5 And we do further direct and enjoin that our said Governor is not to assent in our name to any bill of any of the classes hereinafter specified, that is to say —

(1) Any bill for divorce

(2) Any bill whereby any grant of land or money or other donation or gratuity may be made to himself

(3) Any bill affecting the currency of the Island.

(4) Any bill imposing differential duties

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(1) 31 & 32 Vict., c 72

(5) Any bill the provisions of which shall appear inconsistent with obligations imposed upon us by treaty.

(6) Any bill interfering with the discipline or control of our forces in our said Island by land and sea.

(7) Any bill of an extraordinary nature and importance whereby our prerogative, or the rights and property of our subjects not residing in our said Island, or the trade and shipping of the United Kingdom and its dependencies, may be prejudiced.

(8) Any bill containing provisions to which our assent has been once refused, or which have been disallowed by us :—

Unless our said Governor shall have previously obtained our instructions upon such bill through one of our Principal Secretaries of State or unless such bill shall contain a clause suspending the operation of such bill until the signification in our said Island of our pleasure thereupon, or unless our said Governor shall have satisfied himself that an urgent necessity exists requiring that such bill be brought into immediate operation, in which case he is authorised to assent in our name to such bill unless the same shall be repugnant to the law of England, or inconsistent with any obligations imposed upon us by treaty. But he is to transmit to us, by the earliest opportunity, the bill so assented to, together with his reasons for assenting thereto.

6. And we do further direct and enjoin our said Governor to transmit to us, through one of our Principal Secretaries of State, a transcript in duplicate of every law which has been assented to by him in our name, together with a marginal abstract thereof duly authenticated under the Public Seal of our said Island, and that such transcript shall be accompanied with such explanatory observations as may be required to exhibit the reasons and occasion for proposing such laws.

7. And whereas we have by our said Letters Patent authorised and empowered our said Governor as he shall see occasion, in our name and on our behalf, to grant to any offender convicted of any crime in any court, or before any judge, justice or magistrate within our said Island, a pardon, either free or subject to lawful conditions ; Now we do hereby direct and enjoin our said Governor to call upon the judge who presided at the trial of any offender who shall have been condemned to suffer death by the sentence of any court within our said Island to make to our said Governor a written report of the case of such offender, and such report of the said judge shall by our said Governor be taken into consideration at the first meeting thereafter which may be conveniently held of the said Commission, where the said judge may be specially summoned to attend ; and our said Governor shall not pardon or reprieve any such offender as aforesaid, unless it shall appear to him expedient so to do, upon receiving the advice of the Commission therein, but in all such cases he is to decide either to extend or to withhold a pardon or reprieve,



according to his own deliberate judgment, whether the members of the said Commission concur therein or otherwise, entering, nevertheless, on the minutes of the said Commission a minute of his reasons at length, in case he should decide any such questions in opposition to the judgment of the said Commission

8 And we do further direct and enjoin that all commissions granted by our said Governor to any person or persons to be judges, justices of the peace, or other officers shall, unless otherwise provided by law be granted during pleasure only, and whenever our said Governor shall appoint to any vacant office or employment of which the initial emoluments amount to or exceed 1,200 dollars a year, any person not by us specially directed to be appointed thereto, he shall at the same time distinctly inform such person that such appointment is to be considered only as temporary and provisional until our allowance or disallowance thereof be signified

9 And whereas great prejudice may happen to our service and to the security of our said Island by the absence therefrom of our said Governor he shall not upon any pretence whatsoever quit our said Island without having first obtained leave from us for so doing under our Sign Manual and Signet, or through one of our Principal Secretaries of State

10 In these our Instructions the term 'Governor' shall, unless inconsistent with the context, include every person for the time being administering the Government of our said Island

Given at our Court at Saint James's this 30th day of January, 1934, in the 24th year of our reign

## EMPIRE OF INDIA

Act of the Imperial Parliament to make provision for the Government.

[26 Geo. V, c. 2.—August 2, 1935.]

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### PART I.—INTRODUCTORY

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2. (1) All rights, authority and jurisdiction heretofore belonging to His Majesty the King, Emperor of India, which appertain or are incidental to the government of the territories in India for the time being vested in him, and all rights, authority and jurisdiction exercisable by him in or in relation to any other territories in India, are exercisable by His Majesty, except in so far as may be otherwise provided by or under this Act, or as may be otherwise directed by His Majesty :

Provided that any powers connected with the exercise of the functions of the Crown in its relations with Indian States shall in India, if not exercised by His Majesty, be exercised only by, or by persons acting under the authority of, His Majesty's representative for the exercise of those functions of the Crown.

(2) The said rights, authority and jurisdiction shall include any rights, authority or jurisdiction heretofore exercisable in or in relation to any territories in India by the Secretary of State, the Secretary of State in Council, the Governor-General, the Governor-General in Council, any Governor or any local Government, whether by delegation from His Majesty or otherwise.

3. (1) The Governor-General of India is appointed by His Majesty by a Commission under the Royal Sign Manual and has—

(a) all such powers and duties as are conferred or imposed on him by or under this Act ; and

(b) such other powers of His Majesty, not being powers connected with the exercise of the functions of the Crown in its relations with Indian States, as His Majesty may be pleased to assign to him.

(2) His Majesty's representative for the exercise of the functions of the Crown in its relations with Indian States is appointed by His Majesty in like manner and has such powers and duties in connection with the exercise of those functions (not being powers or duties conferred or imposed by or under this Act on the Governor-General) as His Majesty may be pleased to assign to him.

(3) It shall be lawful for His Majesty to appoint one person to fill both the said offices.

4. There shall be a Commander-in-Chief of His Majesty's Forces in India appointed by warrant under the Royal Sign Manual.

## PART II.—THE FEDERATION OF INDIA

### *Chapter I.—Establishment of Federation and Accession of Indian States*

5. (1) It shall be lawful for His Majesty, if an address in that behalf has been presented to him by each House of Parliament and if the condition hereinafter mentioned is satisfied, to declare by proclamation that as from the day therein appointed there shall be united in a Federation under the Crown, by the name of "the Federation of India"—

(a) the Provinces hereinafter called "Governors' Provinces"; and

(b) the Indian States which have acceded or may thereafter accede to the Federation,

and in the Federation so established there shall be included the Provinces hereinafter called "Chief Commissioners' Provinces"

(2) The condition referred to is that States—

(a) the Rulers whereof will, in accordance with the provisions contained in part II of the first schedule to this Act, be entitled to choose not less than 52 members of the Council of State; and

(b) the aggregate population whereof, as ascertained in accordance with the said provisions, amount to at least one-half of the total population of the States as so ascertained, have acceded to the Federation

6. (1) A State shall be deemed to have acceded to the Federation if His Majesty has signified his acceptance of an instrument of accession executed by the Ruler thereof, whereby the Ruler for himself, his heirs and successors—

(a) declares that he accedes to the Federation as established under this Act, with the intent that His Majesty the King, the Governor-General of India, the Federal Legislature, the Federal Court and any other Federal authority established for the purposes of the Federation shall, by virtue of his instrument of accession, but subject always to the terms thereof, and for the purpose only of the Federation, exercise in relation to his State such functions as may be vested in them by or under this Act; and

(b) assumes the obligation of ensuring that due effect is given within his State to the provisions of this Act so far as they are applicable therein by virtue of his instrument of accession:

Provided that an instrument of accession may be executed conditionally on the establishment of the Federation on or before a specified date, and in that case the State shall not be deemed to have acceded to the Federation if the Federation is not established until after that date.

(2) An instrument of accession shall specify the matters which the Ruler accepts as matters with respect to which the Federal Legislature may make laws for his State, and the limitations, if any, to which the power of the Federal Legislature to make laws for his State, and the exercise of the executive authority of the Federation in his State, are respectively to be subject.

(3) A Ruler may, by a supplementary instrument executed by him and accepted by His Majesty, vary the instrument of accession of his State by extending the functions which by virtue of that instrument are exercisable by His Majesty or any Federal authority in relation to his State.

(4) Nothing in this section shall be construed as requiring His Majesty to accept any instrument of accession or supplementary instrument unless he considers it proper so to do, or as empowering His Majesty to accept any such instrument if it appears to him that the terms thereof are inconsistent with the scheme of Federation embodied in this Act :

Provided that after the establishment of the Federation, if any instrument has in fact been accepted by His Majesty, the validity of that instrument or of any of its provisions shall not be called in question and the provisions of this Act shall, in relation to the State, have effect subject to the provisions of the instrument.

(5) It shall be a term of every instrument of accession that the provisions of this Act mentioned in the second schedule thereto may, without affecting the accession of the State, be amended by or by authority of Parliament, but no such amendment shall, unless it is accepted by the Ruler in a supplementary instrument, be construed as extending the functions which by virtue of the instrument are exercisable by His Majesty or any Federal authority in relation to the State.

(6) An instrument of accession or supplementary instrument shall not be valid unless it is executed by the Ruler himself, but, subject as aforesaid, references in this Act to the Ruler of a State include references to any persons for the time being exercising the powers of the Ruler of the State, whether by reason of the Ruler's minority or for any other reason.

(7) After the establishment of the Federation the request of a Ruler that his State may be admitted to the Federation shall be transmitted to His Majesty through the Governor-General, and after the expiration of 20 years from the establishment of the Federation the Governor-General shall not transmit to His Majesty

any such request until there has been presented to him by each Chamber of the Federal Legislature, for submission to His Majesty an address praying that His Majesty may be pleased to admit the State into the Federation

(8) In this Act a State which has acceded to the Federation is referred to as 'a Federated State,' and the instrument by virtue of which a State has so acceded construed together with any supplementary instrument executed under this section, is referred to as 'the instrument of accession' of that State

(9) As soon as may be after any instrument of accession or supplementary instrument has been accepted by His Majesty under this section, copies of the instrument and of His Majesty's acceptance thereof shall be laid before Parliament, and all courts shall take judicial notice of every such instrument and acceptance

## *Chapter II —The Federal Executive*

### THE GOVERNOR GENERAL

7 (1) Subject to the provisions of this Act, the executive authority of the Federation shall be exercised on behalf of His Majesty by the Governor General, either directly or through officers subordinate to him but nothing in this section shall prevent the Federal Legislature from conferring functions upon subordinate authorities or be deemed to transfer to the Governor General any functions conferred by any existing Indian law on any court, judge or officer, or on any local or other authority

(2) References in this Act to the functions of the Governor-General shall be construed as references to his powers and duties in the exercise of the executive authority of the Federation and to any other powers and duties conferred or imposed on him as Governor General by or under this Act, other than powers exercisable by him by reason that they have been assigned to him by His Majesty under part I of this Act

(3) The provisions of the third schedule to this Act shall have effect with respect to the salary and allowances of the Governor-General and the provision to be made for enabling him to discharge conveniently and with dignity the duties of his office

8 (1) Subject to the provisions of this Act, the executive authority of the Federation extends—

(a) to the matters with respect to which the Federal Legislature has power to make laws,

(b) to the raising in British India on behalf of His Majesty of naval, military and air forces and to the governance of His Majesty's forces borne on the Indian establishment,

(c) to the exercise of such rights, authority and jurisdiction

as are exercisable by His Majesty by treaty, grant, usage, sufferance, or otherwise in and in relation to the tribal areas :

Provided that—

(i) the said authority does not, save as expressly provided in this Act, extend in any Province to matters with respect to which the Provincial Legislature has power to make laws ;

(ii) the said authority does not, save as expressly provided in this Act, extend in any Federated State save to matters with respect to which the Federal Legislature has power to make laws for that State, and the exercise thereof in each State shall be subject to such limitations, if any, as may be specified in the instrument of accession of the State ;

(iii) the said authority does not extend to the enlistment or enrolment in any forces raised in India of any person unless he is either a subject of His Majesty or a native of India or of territories adjacent to India ; and

(iv) commissions in any such force shall be granted by His Majesty save in so far as he may be pleased to delegate that power by virtue of the provisions of part I of this Act or otherwise.

(2) The executive authority of the Ruler of a Federated State shall, notwithstanding anything in this section, continue to be exercisable in that State with respect to matters with respect to which the Federal Legislature has power to make laws for that State except in so far as the executive authority of the Federation becomes exercisable in the State to the exclusion of the executive authority of the Ruler by virtue of a Federal law.

#### ADMINISTRATION OF FEDERAL AFFAIRS

9. (1) There shall be a Council of Ministers, not exceeding ten in number, to aid and advise the Governor-General in the exercise of his functions, except in so far as he is by or under this Act required to exercise his functions or any of them in his discretion :

Provided that nothing in this sub-section shall be construed as preventing the Governor-General from exercising his individual judgment in any case where by or under this Act he is required so to do.

(2) The Governor-General in his discretion may preside at meetings of the Council of Ministers.

(3) If any question arises whether any matter is or is not a matter as respects which the Governor-General is by or under this Act required to act in his discretion or to exercise his individual judgment, the decision of the Governor-General in his discretion shall be final, and the validity of anything done by the Governor-General shall not be called in question on the ground that he ought or ought not to have acted in his discretion, or ought or ought not to have exercised his individual judgment.

10 (1) The Governor General's Ministers shall be chosen and summoned by him, shall be sworn as members of the Council, and shall hold office during his pleasure

(2) A Minister who for any period of 6 consecutive months is not a member of either Chamber of the Federal Legislature shall at the expiration of that period cease to be a Minister

(3) The salaries of Ministers shall be such as the Federal Legislature may from time to time by Act determine and, until the Federal Legislature so determine, shall be determined by the Governor-General

Provided that the salary of a Minister shall not be varied during his term of office

(4) The question whether any and, if so, what advice was tendered by Ministers to the Governor-General shall not be inquired into in any court

(5) The functions of the Governor-General with respect to the choosing and summoning and the dismissal of Ministers, and with respect to the determination of their salaries, shall be exercised by him in his discretion

11 (1) The functions of the Governor-General with respect to defence and ecclesiastical affairs and with respect to external affairs, except the relations between the Federation and any part of His Majesty's dominions, shall be exercised by him in his discretion and his functions in or in relation to the tribal areas shall be similarly exercised

(2) To assist him in the exercise of those functions the Governor-General may appoint Counsellors, not exceeding three in number, whose salaries and conditions of service shall be such as may be prescribed by His Majesty in Council

12 (1) In the exercise of his functions the Governor-General shall have the following special responsibilities, that is to say,—

(a) the prevention of any grave menace to the peace or tranquillity of India or any part thereof,

(b) the safeguarding of the financial stability and credit of the Federal Government,

(c) the safeguarding of the legitimate interests of minorities,

(d) the securing to, and to the dependants of, persons who are or have been members of the public services of any rights provided or preserved for them by or under this Act and the safeguarding of their legitimate interests,

(e) the securing in the sphere of executive action of the purposes which the provisions of chapter III of part V of this Act are designed to secure in relation to legislation,

(f) the prevention of action which would subject goods of United Kingdom or Burmese origin imported into India to discriminatory or penal treatment ;

(g) the protection of the rights of any Indian State and the rights and dignity of the Ruler thereof ; and

(h) the securing that the due discharge of his functions with respect to matters with respect to which he is by or under this Act required to act in his discretion, or to exercise his individual judgment, is not prejudiced or impeded by any course of action taken with respect to any other matter.

(2) If and in so far as any special responsibility of the Governor-General is involved, he shall in the exercise of his functions exercise his individual judgment as to the action to be taken.

13. (1) The Secretary of State shall lay before Parliament the draft of any instrument of Instructions (including any instrument amending or revoking an instrument previously issued) which it is proposed to recommend His Majesty to issue to the Governor-General, and no further proceedings shall be taken in relation thereto except in pursuance of an address presented to His Majesty by both Houses of Parliament praying that the instrument may be issued.

(2) The validity of anything done by the Governor-General shall not be called in question on the ground that it was done otherwise than in accordance with any instrument of Instructions issued to him.

14. (1) In so far as the Governor-General is by or under this Act required to act in his discretion or to exercise his individual judgment, he shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given to him by, the Secretary of State, but the validity of anything done by the Governor-General shall not be called in question on the ground that it was done otherwise than in accordance with the provisions of this section.

(2) Before giving any directions under this section the Secretary of State shall satisfy himself that nothing in the directions requires the Governor-General to act in any manner inconsistent with any instrument of Instructions issued to him by His Majesty.

15. (1) The Governor-General may appoint a person to be his Financial Adviser.

(2) It shall be the duty of the Governor-General's Financial Adviser to assist by his advice the Governor-General in the discharge of his special responsibility for safeguarding the financial stability and credit of the Federal Government, and also to give advice to the Federal Government upon any matter relating to finance with respect to which he may be consulted.

(3) The Governor-General's Financial Adviser shall hold office during the pleasure of the Governor-General, and the salary and



allowances of the Financial Adviser and the numbers of his staff and their conditions of service shall be such as the Governor-General may determine

(4) The powers of the Governor General with respect to the appointment and dismissal of a Financial Adviser, and with respect to the determination of his salary and allowances and the numbers of his staff and their conditions of service, shall be exercised by him in his discretion

*Provided that, if the Governor-General has determined to appoint a Financial Adviser, he shall, before making any appointment other than the first appointment, consult his Ministers as to the person to be selected*

16 (1) The Governor-General shall appoint a person, being a person qualified to be appointed a judge of the Federal Court, to be Advocate-General for the Federation

(2) It shall be the duty of the Advocate General to give advice to the Federal Government upon such legal matters, and to perform such other duties of a legal character, as may be referred or assigned to him by the Governor-General, and in the performance of his duties he shall have right of audience in all courts in British India and, in a case in which Federal interests are concerned, in all courts in any Federated State

(3) The Advocate-General shall hold office during the pleasure of the Governor-General, and shall receive such remuneration as the Governor General may determine

(4) In exercising his powers with respect to the appointment and dismissal of the Advocate General and with respect to the determination of his remuneration, the Governor General shall exercise his individual judgment

17 (1) All executive action of the Federal Government shall be expressed to be taken in the name of the Governor-General

(2) Orders and other instruments made and executed in the name of the Governor General shall be authenticated in such manner as may be specified in rules to be made by the Governor-General and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor-General

(3) The Governor General shall make rules for the more convenient transaction of the business of the Federal Government, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor General is by or under this Act required to act in his discretion

(4) The rules shall include provisions requiring Ministers and Secretaries to Government to transmit to the Governor General all such information with respect to the business of the Federal Govern-

ment as may be specified in the rules, or as the Governor-General may otherwise require to be so transmitted, and in particular requiring a Minister to bring to the notice of the Governor-General, and the appropriate Secretary to bring to the notice of the Minister concerned and of the Governor-General, any matter under consideration by him which involves, or appears to him likely to involve, any special responsibility of the Governor-General.

(5) In the discharge of his functions under sub-sections (2), (3) and (4) of this section the Governor-General shall act in his discretion after consultation with his Ministers.

### *Chapter III.—The Federal Legislature*

#### GENERAL

18. (1) There shall be a Federal Legislature which shall consist of His Majesty, represented by the Governor-General, and two Chambers, to be known respectively as “the Council of State” and “the House of Assembly” (in this Act referred to as “the Federal Assembly”).

(2) The Council of State shall consist of 156 representatives of British India and not more than 104 representatives of the Indian States, and the Federal Assembly shall consist of 250 representatives of British India and not more than 125 representatives of the Indian States.

(3) The said representatives shall be chosen in accordance with the provisions in that behalf contained in the first schedule to this Act.

(4) The Council of State shall be a permanent body not subject to dissolution, but as near as may be one-third of the members thereof shall retire in every third year in accordance with the provisions in that behalf contained in the said first schedule.

(5) Every Federal Assembly, unless sooner dissolved, shall continue for 5 years from the date appointed for their first meeting and no longer, and the expiration of the said period of 5 years shall operate as a dissolution of the Assembly.

19. (1) The Chambers of the Federal Legislature shall be summoned to meet once at least in every year, and 12 months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session.

(2) Subject to the provisions of this section, the Governor-General may in his discretion from time to time—

(a) summon the Chambers or either Chamber to meet at such time and place as he thinks fit ;

(b) prorogue the Chambers ;

(c) dissolve the Federal Assembly.

Provided that, if it appears to the Governor General that the bill relates to finance or to any matter which affects the discharge of his functions in so far as he is by or under this Act required to act in his discretion or to exercise his individual judgment, he may so notify the Chambers notwithstanding that there has been no rejection of or final disagreement as to the bill and notwithstanding that the said period of 6 months has not elapsed, if he is satisfied that there is no reasonable prospect of the bill being presented to him for his assent without undue delay

In reckoning any such period of 6 months as is referred to in this sub section, no account shall be taken of any time during which the Legislature is prorogued or during which both Chambers are adjourned for more than 4 days

(2) Where the Governor-General has notified his intention of summoning the Chambers to meet in a joint sitting, neither Chamber shall proceed further with the bill, but the Governor General may at any time in the next session after the expiration of 6 months from the date of his notification summon the Chambers to meet in a joint sitting for the purpose specified in his notification and if he does so, the Chambers shall meet accordingly

Provided that, if it appears to the Governor General that the bill is such a bill as is mentioned in the proviso to sub section (1) of this section, he may summon the Chambers to meet in a joint sitting for the purpose aforesaid at any date, whether in the same session or in the next session

(3) The functions of the Governor-General under the provisos to the two last preceding sub sections shall be exercised by him in his discretion

(4) If at the joint sitting of the two Chambers the bill, with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Chambers present and voting, it shall be deemed for the purposes of this Act to have been passed by both Chambers

Provided that at a joint sitting—

(a) if the bill, having been passed by one Chamber, has not been passed by the other Chamber with amendments and returned to the Chamber in which it originated, no amendment shall be proposed to the bill other than such amendments (if any) as are made necessary by the delay in the passage of the bill,

(b) if the bill has been so passed and returned, only such amendments as aforesaid shall be proposed to the bill and such other amendments as are relevant to the matters with respect to which the Chambers have not agreed,

and the decision of the person presiding as to the amendments which are admissible under this sub section shall be final

(5) A joint sitting may be held under this section and a bill passed thereat notwithstanding that a dissolution of the Assembly has intervened since the Governor-General notified his intention to summon the Chambers to meet therein.

32. (1) When a bill has been passed by the Chambers, it shall be presented to the Governor-General, and the Governor-General shall in his discretion declare either that he assents in His Majesty's name to the bill, or that he withholds assent therefrom, or that he reserves the bill for the signification of His Majesty's pleasure :

Provided that the Governor-General may in his discretion return the bill to the Chambers with a message requesting that they will reconsider the bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and the Chambers shall reconsider the bill accordingly.

(2) A bill reserved for the signification of His Majesty's pleasure shall not become an Act of the Federal Legislature unless and until, within 12 months from the day on which it was presented to the Governor-General, the Governor-General makes known by public notification that His Majesty has assented thereto.

(3) Any Act assented to by the Governor-General may be disallowed by His Majesty within 12 months from the day of the Governor-General's assent, and where any Act is so disallowed the Governor-General shall forthwith make the disallowance known by public notification, and as from the date of the notification the Act shall become void.

#### PROCEDURE IN FINANCIAL MATTERS

33. (1) The Governor-General shall in respect of every financial year cause to be laid before both Chambers of the Federal Legislature a statement of the estimated receipts and expenditure of the Federation for that year, in this part of this Act referred to as " the annual financial statement."

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

(a) the sums required to meet expenditure described by this Act as expenditure charged upon the revenues of the Federation ; and.

(b) the sums required to meet other expenditure proposed to be made from the revenues of the Federation, and shall distinguish expenditure on revenue account from other expenditure, and indicate the sums, if any, which are included solely because the Governor-General has directed their inclusion as being necessary for the due discharge of any of his special responsibilities.

(3) The following expenditure shall be expenditure charged on the revenues of the Federation —

(a) the salary and allowances of the Governor General and other expenditure relating to his office for which provision is required to be made by Order in Council ,

(b) debt charges for which the Federation is liable, including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt ,

(c) the salaries and allowances of Ministers, of Counsellors, of the Financial Adviser, of the Advocate General, of Chief Commissioners and of the staff of the Financial Adviser ,

(d) the salaries, allowances, and pensions payable to or in respect of judges of the Federal Court, and the pensions payable to or in respect of judges of any High Court ,

(e) expenditure for the purpose of the discharge by the Governor-General of his functions with respect to defence and ecclesiastical affairs, his functions with respect to external affairs in so far as he is by or under this Act required in the exercise thereof to act in his discretion, his functions in or in relation to tribal areas and his functions in relation to the administration of any territory in the direction and control of which he is under this Act required to act in his discretion provided that the sum so charged in any year in respect of expenditure on ecclesiastical affairs shall not exceed 42 lakhs of rupees exclusive of pension charges ,

(f) the sums payable to His Majesty under this Act out of the revenues of the Federation in respect of the expenses incurred in discharging the functions of the Crown in its relations with Indian States

(g) any grants for purposes connected with the administration of any areas in a Province which are for the time being excluded areas ,

(h) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal ,

(i) any other expenditure declared by this Act or any Act of the Federal Legislature to be so charged

(4) Any question whether any proposed expenditure falls within a class of expenditure charged on the revenues of the Federation shall be decided by the Governor-General in his discretion

34 (1) So much of the estimates of expenditure as relates to expenditure charged upon the revenues of the Federation shall not be submitted to the vote of the Legislature, but nothing in this sub section shall be construed as preventing the discussion in either Chamber of the Legislature of any of those estimates other than estimates relating to expenditure referred to in paragraph (a) or paragraph (f) of sub-section (3) of the last preceding section

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the Federal Assembly and thereafter to the Council of State, and either Chamber shall have power to assent or to refuse to assent to any demand, or to assent to any demand subject to a reduction of the amount specified therein :

Provided that, where the Assembly have refused to assent to any demand, that demand shall not be submitted to the Council of State, unless the Governor-General so directs and, where the Assembly have assented to a demand subject to a reduction of the amount specified therein, a demand for the reduced amount only shall be submitted to the Council of State, unless the Governor-General otherwise directs ; and where, in either of the said cases, such a direction is given, the demand submitted to the Council of State shall be for such amount, not being a greater amount than that originally demanded, as may be specified in the direction.

(3) If the Chambers differ with respect to any demand the Governor-General shall summon the two Chambers to meet in a joint sitting for the purpose of deliberating and voting on the demand as to which they disagree, and the decision of the majority of the members of both Chambers present and voting shall be deemed to be the decision of the two Chambers.

(4) No demand for a grant shall be made except on the recommendation of the Governor-General.

35. (1) The Governor-General shall authenticate by his signature a schedule specifying—

(a) the grants made by the Chambers under the last preceding section ;

(b) the several sums required to meet the expenditure charged on the revenues of the Federation but not exceeding, in the case of any sum, the sum shown in the statement previously laid before the Legislature :

Provided that, if the Chambers have not assented to any demand for a grant or have assented subject to a reduction of the amount specified therein, the Governor-General may, if in his opinion the refusal or reduction would affect the due discharge of any of his special responsibilities, include in the schedule such additional amount, if any, not exceeding the amount of the rejected demand or the reduction, as the case may be, as appears to him necessary in order to enable him to discharge that responsibility.

(2) The schedule so authenticated shall be laid before both Chambers but shall not be open to discussion or vote therein.

(3) Subject to the provisions of the next succeeding section, no expenditure from the revenues of the Federation shall be deemed to be duly authorised unless it is specified in the schedule so authenticated.

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37 (1) A bill or amendment making provision—

(a) for imposing or increasing any tax, or

(b) for regulating the borrowing of money or the giving of any guarantee by the Federal Government, or for amending the law with respect to any financial obligations undertaken or to be undertaken by the Federal Government, or

(c) for declaring any expenditure to be expenditure charged on the revenues of the Federation, or for increasing the amount of any such expenditure,

shall not be introduced or moved except on the recommendation of the Governor General, and a bill making such provision shall not be introduced in the Council of State

(2) A bill or amendment shall not be deemed to make provision for any of the purposes aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered

(3) A bill which, if enacted and brought into operation, would involve expenditure from the revenues of the Federation shall not be passed by either Chamber unless the Governor-General has recommended to that Chamber the consideration of the bill

#### PROCEDURE GENERALLY

38 (1) Each Chamber of the Federal Legislature may make rules for regulating, subject to the provisions of this Act, their procedure and the conduct of their business

Provided that as regards each Chamber the Governor-General shall in his discretion, after consultation with the President or the Speaker, as the case may be make rules—

(a) for regulating the procedure of, and the conduct of business in, the Chamber in relation to any matter which affects the discharge of his functions in so far as he is by or under this Act required to act in his discretion or to exercise his individual judgment,

(b) for securing the timely completion of financial business,

(c) for prohibiting the discussion of, or the asking of questions on, any matter connected with any Indian State, other than a matter with respect to which the Federal Legislature has power to make laws for that State unless the Governor-General in his discretion is satisfied that the matter affects Federal interests or affects a British subject, and has given his consent to the matter being discussed or the question being asked,

(d) for prohibiting, save with the consent of the Governor-General in his discretion—

(i) the discussion of, or the asking of questions on, any matter

connected with relations between His Majesty or the Governor-General and any foreign State or Prince ; or

(ii) the discussion, except in relation to estimates of expenditure of, or the asking of questions on, any matter connected with the tribal areas or the administration of any excluded area ; or

(iii) the discussion of, or the asking of questions on, any action taken in his discretion by the Governor-General in relation to the affairs of a Province ; or

(iv) the discussion of, or the asking of questions on, the personal conduct of the Ruler of any Indian State, or of a member of the ruling family thereof ;

and, if and in so far as any rule so made by the Governor-General is inconsistent with any rule made by a Chamber, the rule made by the Governor-General shall prevail.

(2) The Governor-General, after consultation with the President of the Council of State and the Speaker of the Legislative Assembly, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Chambers.

The said rules shall make such provision for the purposes specified in the proviso to the preceding sub-section as the Governor-General in his discretion may think fit.

(3) Until rules are made under this section, the rules of procedure and standing orders in force immediately before the establishment of the Federation with respect to the Indian Legislature shall have effect in relation to the Federal Legislature subject to such modifications and adaptations as may be made therein by the Governor-General in his discretion.

(4) At a joint sitting of the two Chambers the President of the Council of State, or in his absence such person as may be determined by rules of procedure made under this section, shall preside.

39. All proceedings in the Federal Legislature shall be conducted in the English language :

Provided that the rules of procedure of each Chamber and the rules with respect to joint sittings shall provide for enabling persons unacquainted, or not sufficiently acquainted, with the English language to use another language.

40. (1) No discussion shall take place in the Federal Legislature with respect to the conduct of any judge of the Federal Court or a High Court in the discharge of his duties.

In this sub-section the reference to a High Court shall be construed as including a reference to any court in a Federated State which is a High Court for any of the purposes of part IX of this Act.

(2) If the Governor-General in his discretion certifies that the discussion of a bill introduced or proposed to be introduced in the Federal Legislature, or of any specified clause of a bill, or of any



amendment moved or proposed to be moved to a bill, would affect the discharge of his special responsibility for the prevention of any grave menace to the peace or tranquillity of India or any part thereof, he may in his discretion direct that no proceedings, or no further proceedings, shall be taken in relation to the bill, clause or amendment, and effect shall be given to the direction

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#### *Chapter IV—Legislative Powers of Governor-General*

42 (1) If at any time when the Federal Legislature is not in session the Governor-General is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require

Provided that the Governor General—

(a) shall exercise his individual judgment as respects the promulgation of any ordinance under this section if a bill containing the same provisions would under this Act have required his previous sanction to the introduction thereof into the Legislature, and

(b) shall not without instructions from His Majesty, promulgate any such ordinance if he would have deemed it necessary to reserve a bill containing the same provisions for the signification of His Majesty's pleasure thereon

(2) An ordinance promulgated under this section shall have the same force and effect as an Act of the Federal Legislature assented to by the Governor General, but every such ordinance—

(a) shall be laid before the Federal Legislature and shall cease to operate at the expiration of 6 weeks from the reassembly of the Legislature, or if before the expiration of that period resolutions disapproving it are passed by both Chambers, upon the passing of the second of those resolutions,

(b) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Federal Legislature assented to by the Governor-General, and

(c) may be withdrawn at any time by the Governor-General

(3) If and so far as an ordinance under this section makes any provision which the Federal Legislature would not under this Act be competent to enact, it shall be void

43 (1) If at any time the Governor-General is satisfied that circumstances exist which render it necessary for him to take immediate action for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment, he may promulgate such ordinances as in his opinion the circumstances of the case require

(2) An ordinance promulgated under this section shall continue in operation for such period not exceeding 6 months as may be specified therein, but may by a subsequent ordinance be extended for a further period not exceeding 6 months.

(3) An ordinance promulgated under this section shall have the same force and effect as an Act of the Federal Legislature assented to by the Governor-General, but every such ordinance—

(a) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Federal Legislature assented to by the Governor-General ;

(b) may be withdrawn at any time by the Governor-General ; and

(c) if it is an ordinance extending a previous ordinance for a further period, shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament.

(4) If and so far as an ordinance under this section makes any provision which the Federal Legislature would not under this Act be competent to enact, it shall be void.

(5) The functions of the Governor-General under this section shall be exercised by him in his discretion.

44. (1) If at any time it appears to the Governor-General that, for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment, it is essential that provision should be made by legislation, he may by message to both Chambers of the Legislature explain the circumstances which in his opinion render legislation essential, and either—

(a) enact forthwith, as a Governor-General's Act, a bill containing such provisions as he considers necessary ; or

(b) attach to his message a draft of the bill which he considers necessary.

(2) Where the Governor-General takes such action as is mentioned in paragraph (b) of the preceding sub-section, he may at any time after the expiration of one month enact, as a Governor-General's Act, the bill proposed by him to the Chambers either in the form of the draft communicated to them or with such amendments as he deems necessary, but before so doing he shall consider any address which may have been presented to him within the said period by either Chamber with reference to the bill or to amendments suggested to be made therein.

(3) A Governor-General's Act shall have the same force and effect, and shall be subject to disallowance in the same manner, as an Act of the Federal Legislature assented to by the Governor-General and, if and in so far as a Governor-General's Act makes any provision which the Federal Legislature would not under this Act be competent to enact, it shall be void.

(4) Every Governor General's Act shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament

(5) The functions of the Governor General under this section shall be exercised by him in his discretion

### *Chapter V —Provisions in Case of Failure of Constitutional Machinery*

45 (1) If at any time the Governor General is satisfied that a situation has arisen in which the government of the Federation cannot be carried on in accordance with the provisions of this Act, he may by proclamation—

(a) declare that his function shall to such extent as may be specified in the proclamation be exercised by him in his discretion,

(b) assume to himself all or any of the powers vested in or exercisable by any Federal body or authority,

and any such proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Act relating to any Federal body or authority

Provided that nothing in this sub-section shall authorise the Governor General to assume to himself any of the powers vested in or exercisable by the Federal Court or to suspend, either in whole or in part, the operation of any provision of this Act relating to the Federal Court

(2) Any such proclamation may be revoked or varied by a subsequent proclamation

(3) A proclamation issued under this section—

(a) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament,

(b) unless it is a proclamation revoking a previous proclamation shall cease to operate at the expiration of 6 months

Provided that, if and so often as a resolution approving the continuance in force of such a proclamation is passed by both Houses of Parliament, the proclamation shall, unless revoked continue in force for a further period of 12 months from the date on which under this sub section it would otherwise have ceased to operate

(4) If at any time the government of the Federation has for a continuous period of 3 years been carried on under and by virtue of a proclamation issued under this section then, at the expiration of that period, the proclamation shall cease to have effect and the government of the Federation shall be carried on in accordance with the other provisions of this Act, subject to any amendment thereof

which Parliament may deem it necessary to make, but nothing in this sub-section shall be construed as extending the power of Parliament to make amendments in this Act without affecting the accession of a State.

(5) If the Governor-General, by a proclamation under this section, assumes to himself any power of the Federal Legislature to make laws, any law made by him in the exercise of that power shall, subject to the terms thereof, continue to have effect until 2 years have elapsed from the date on which the proclamation ceases to have effect, unless sooner repealed or re-enacted by Act of the appropriate Legislature, and any reference in this Act to Federal Acts, Federal laws, or Acts or laws of the Federal Legislature shall be construed as including a reference to such a law.

(6) The functions of the Governor-General under this section shall be exercised by him in his discretion.

### PART III.—THE GOVERNORS' PROVINCES

#### *Chapter I.—The Provinces*

46. (1) Subject to the provisions of the next succeeding section with respect to Berar, the following shall be Governors' Provinces, that is to say, Madras, Bombay, Bengal, the United Provinces, the Punjab, Bihar, the Central Provinces and Berar, Assam, the North West Frontier Province, Orissa, Sind, and such other Governors' Provinces as may be created under this Act.

(2) Burma shall cease to be part of India.

(3) In this Act the expression "Province" means, unless the context otherwise requires, a Governor's Province, and "provincial" shall be construed accordingly.

47. Whereas certain territory (in this Act referred to as "Berar") is under the sovereignty of His Exalted Highness the Nizam of Hyderabad, but is at the date of the passing of this Act, by virtue of certain agreements subsisting between His Majesty and His Exalted Highness, administered together with the Central Provinces :

And whereas it is in contemplation that an agreement shall be concluded between His Majesty and His Exalted Highness whereby, notwithstanding the continuance of the sovereignty of His Exalted Highness over Berar, the Central Provinces and Berar may be governed together as one Governor's Province under this Act by the name of "the Central Provinces and Berar" :

Now, therefore—

(1) While any such agreement is in force—

(a) Berar and the Central Provinces shall, notwithstanding the continuance of the sovereignty of His Exalted Highness, be deemed to be one Governor's Province by the name of "the Central Provinces and Berar" ;

(b) any reference in this Act or in any other Act to British India shall be construed as a reference to British India and Berar, and any reference in this Act to subjects of His Majesty shall, except for the purposes of any oath of allegiance, be deemed to include a reference to Berari subjects of His Exalted Highness,

(c) any provision made under this Act with respect to the qualifications of the voters for the Provincial Legislature of the Central Provinces and Berar, or the voters for the Council of State, shall be such as to give effect to any provisions with respect to those matters contained in the agreement

(2) If no such agreement is concluded, or if such an agreement is concluded but subsequently ceases to have effect, references in this Act to the Central Provinces and Berar shall be construed as references to the Central Provinces, and His Majesty in Council may make such consequential modifications in the provisions of this Act relating to the Central Provinces as he thinks proper

## *Chapter II —The Provincial Executive*

[Reproduces generally, *mutatis mutandis*, and with minor variations, the provisions of chapter II of part II, but without sections 11 and 15 Sections 56–58 are, however, special to part III]

### THE GOVERNOR

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### ADMINISTRATION OF PROVINCIAL AFFAIRS

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56 Where it is proposed that the Governor of a Province should by virtue of any powers vested in him make or amend or approve the making or amendment of, any rules, regulations or orders relating to any police force, whether civil or military, he shall exercise his individual judgment with respect to the proposal, unless it appears to him that the proposal does not relate to or affect the organisation or discipline of that force

57 (1) If it appears to the Governor of a Province that the peace or tranquillity of the Province is endangered by the operations of any persons committing or conspiring, preparing or attempting to commit, crimes of violence which, in the opinion of the Governor, are intended to overthrow the Government as by law established the Governor may, if he thinks that the circumstances of the case require him so to do for the purpose of combating those operations, direct that his functions shall, to such extent as may be specified in the direction, be exercised by him in his discretion and, until otherwise provided by a subsequent direction of the Governor, those functions shall to that extent be exercised by him accordingly

(2) While any such direction is in force, the Governor may authorise an official to speak in and otherwise take part in the proceedings of the Legislature, and any official so authorised may speak and take part accordingly in the proceedings of the Chamber or Chambers of the Legislature, any joint sitting of the Chambers, and any committee of the Legislature of which he may be named a member by the Governor, but shall not be entitled to vote.

(3) The functions of the Governor under this section shall be exercised by him in his discretion.

(4) Nothing in this section affects the special responsibility of the Governor for the prevention of any grave menace to the peace or tranquillity of the Province or any part thereof.

58. The Governor in his discretion shall make rules for securing that no records or information relating to the sources from which information has been or may be obtained with respect to the operations of persons committing, or conspiring, preparing, or attempting to commit, such crimes as are mentioned in the last preceding section, shall be disclosed or given—

(a) by any member of any police force in the Province to another member of that force except in accordance with directions of the Inspector-General of Police or Commissioner of Police, as the case may be, or to any other person except in accordance with directions of the Governor in his discretion; or

(b) by any other person in the service of the Crown in the Province to any person except in accordance with directions of the Governor in his discretion.

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### *Chapter III.—The Provincial Legislature*

#### GENERAL

60. (1) There shall for every Province be a Provincial Legislature which shall consist of His Majesty, represented by the Governor, and—

(a) in the Provinces of Madras, Bombay, Bengal, the United Provinces, Bihar and Assam, two Chambers;

(b) in other Provinces, one Chamber.

(2) Where there are two Chambers of a Provincial Legislature, they shall be known respectively as “the Legislative Council” and “the Legislative Assembly,” and where there is only one Chamber, the Chamber shall be known as “the Legislative Assembly.”

61-66. [Reproduce generally, *mutatis mutandis*, and with minor variations, the provisions of sections 19-23.]

#### PROVISIONS AS TO MEMBERS OF LEGISLATURES

67-72. [Reproduce generally, *mutatis mutandis*, and with minor variations, the provisions of sections 24-29.]

## LEGISLATIVE PROCEDURE

73 [Reproduces generally, *mutatis mutandis*, and with minor variations, the provisions of section 30]

74 (1) Subject to the provisions of this section, a bill shall not be deemed to have been passed by the Chambers of the Legislature of a Province having a Legislative Council, unless it has been agreed to by both Chambers, either without amendments or with such amendments as are agreed to by both Chambers

(2) If a bill which has been passed by the Legislative Assembly and transmitted to the Legislative Council is not, before the expiration of 12 months from its reception by the Council, presented to the Governor for his assent the Governor may summon the Chambers to meet in a joint sitting for the purpose of deliberating and voting on the bill

Provided that, if it appears to the Governor that the bill relates to finance or affects the discharge of any of his special responsibilities he may summon the Chambers to meet in a joint sitting for the purpose aforesaid notwithstanding that the said period of 12 months has not elapsed

The functions of the Governor under the proviso to this subsection shall be exercised by him in his discretion

(3) If at a joint sitting of the two Chambers summoned in accordance with the provisions of this section the bill, with such amendments if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Chambers present and voting it shall be deemed for the purposes of this Act to have been passed by both Chambers

Provided that at a joint sitting—

(a) unless the bill has been passed by the Legislative Council with amendments and returned to the Legislative Assembly, no amendment shall be proposed to the bill other than such amendments if any, as are made necessary by the delay in the passage of the bill

(b) if the bill has been so passed and returned by the Legislative Council only such amendments as aforesaid shall be proposed to the bill and such other amendments as are relevant to the matters with respect to which the Chambers have not agreed, and the decision of the person presiding as to the amendments which are admissible under this sub section shall be final

75-77 [Reproduce generally, *mutatis mutandis*, and with minor variations, the provisions of section 32]

## PROCEDURE IN FINANCIAL MATTERS

78-83 [Reproduce generally, *mutatis mutandis*, and with minor variations, the provisions of sections 33-37]

## PROCEDURE GENERALLY

84-87. [Reproduce generally, *mutatis mutandis*, and with minor variations, the provisions of sections 38-41.]

*Chapter IV.—Legislative Powers of Governor*

88-90. [Reproduce generally, *mutatis mutandis*, and with minor variations, the provisions of sections 42-44.]

*Chapter V.—Excluded Areas and Partially Excluded Areas*

91. (1) In this Act the expressions "excluded area" and "partially excluded area" mean respectively such areas as His Majesty may by Order in Council declare to be excluded areas or partially excluded areas.

The Secretary of State shall lay the draft of the Order which it is proposed to recommend His Majesty to make under this sub-section before Parliament within 6 months from the passing of this Act.

(2) His Majesty may at any time by Order in Council—

(a) direct that the whole or any specified part of an excluded area shall become, or become part of, a partially excluded area ;

(b) direct that the whole or any specified part of a partially excluded area shall cease to be a partially excluded area or a part of such an area ;

(c) alter, but only by way of rectification of boundaries, any excluded or partially excluded area ;

(d) on any alteration of the boundaries of a Province, or the creation of a new Province, declare any territory not previously included in any Province to be, or to form part of, an excluded area or a partially excluded area,

and any such Order may contain such incidental and consequential provisions as appear to His Majesty to be necessary and proper, but save as aforesaid the Order in Council made under sub-section (1) of this section shall not be varied by any subsequent Order.

92. (1) The executive authority of a Province extends to excluded and partially excluded areas therein, but, notwithstanding anything in this Act, no Act of the Federal Legislature or of the Provincial Legislature shall apply to an excluded area or a partially excluded area, unless the Governor by public notification so directs, and the Governor in giving such a direction with respect to any Act may direct that the Act shall in its application to the area, or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit.

(2) The Governor may make regulations for the peace and good government of any area in a Province which is for the time being an



excluded area, or a partially excluded area, and any regulations so made may repeal or amend any Act of the Federal Legislature or of the Provincial Legislature, or any existing Indian law, which is for the time being applicable to the area in question

Regulations made under this sub-section shall be submitted forthwith to the Governor General and until assented to by him in his discretion shall have no effect, and the provisions of this part of this Act with respect to the power of His Majesty to disallow Acts shall apply in relation to any such regulations assented to by the Governor-General as they apply in relation to Acts of a Provincial Legislature assented to by him

(3) The Governor shall, as respects any area in a Province which is for the time being an excluded area, exercise his functions in his discretion

### *Chapter VI—Provisions in Case of Failure of Constitutional Machinery*

93 [Reproduces generally, *mutatis mutandis*, and with minor variations the provisions of section 45]

## PART IV—THE CHIEF COMMISSIONERS' PROVINCES

94 (1) The following shall be the Chief Commissioners' Provinces, that is to say, the heretofore existing Chief Commissioners' Provinces of British Baluchistan, Delhi, Ajmer-Merwara, Coorg and the Andaman and Nicobar Islands, the area known as "Parth Piploda" and such other Chief Commissioners' Provinces as may be created under this Act

(2) Aden shall cease to be part of India.

(3) A Chief Commissioners Province shall be administered by the Governor General acting, to such extent as he thinks fit, through a Chief Commissioner to be appointed by him in his discretion

95. (1) In directing and controlling the administration of British Baluchistan the Governor General shall act in his discretion

(2) The executive authority of the Federation extends to British Baluchistan as it extends to other Chief Commissioners' Provinces, but, notwithstanding anything in this Act, no Act of the Federal Legislature shall apply to British Baluchistan unless the Governor General in his discretion by public notification so directs and the Governor General in giving such a direction with respect to any Act may direct that the Act shall in its application to the Province, or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit

(3) The Governor General may in his discretion make regulations for the peace and good government of British Baluchistan,

and any regulations so made may repeal or amend any Act of the Federal Legislature or any existing Indian law which is for the time being applicable to the Province and, when promulgated by the Governor-General, shall have the same force and effect as an Act of the Federal Legislature which applies to the Province.

The provisions of part II of this Act relating to the power of His Majesty to disallow Acts shall apply in relation to any such regulations as they apply in relation to Acts of the Federal Legislature assented to by the Governor-General.

96. The provisions of sub-section (3) of the last preceding section shall apply in relation to the Andaman and Nicobar Islands as they apply in relation to British Baluchistan.

97. Until other provision is made by His Majesty in Council, the constitution, powers and functions of the Coorg Legislative Council, and the arrangements with respect to revenues collected in Coorg and expenses in respect of Coorg, shall continue unchanged.

98. The provisions of part III of this Act with respect to police rules and with respect to crimes of violence intended to overthrow the Government, including the provisions thereof relating to the non-disclosure of certain records and information, shall apply in relation to Chief Commissioners' Provinces as they apply in relation to Governors' Provinces, with the substitution for references to the Governor and the Chamber or Chambers of the Provincial Legislature of references to the Governor-General and the Chambers of the Federal Legislature.

## PART V.—LEGISLATIVE POWERS

### *Chapter I.—Distribution of Powers*

99. (1) Subject to the provisions of this Act, the Federal Legislature may make laws for the whole or any part of British India or for any Federated State, and a Provincial Legislature may make laws for the Province or for any part thereof.

(2) Without prejudice to the generality of the powers conferred by the preceding sub-section, no Federal law shall, on the ground that it would have extraterritorial operation, be deemed to be invalid in so far as it applies—

(a) to British subjects and servants of the Crown in any part of India ; or

(b) to British subjects who are domiciled in any part of India wherever they may be ; or

(c) to, or to persons on, ships or aircraft registered in British India or any Federated State wherever they may be ; or

(d) in the case of a law with respect to a matter accepted in the instrument of accession of a Federated State as a matter

with respect to which the Federal Legislature may make laws for that State, to subjects of that State wherever they may be, or

(e) in the case of a law for the regulation or discipline of any naval, military, or air force raised in British India, to members of, and persons attached to, employed with or following, that force, wherever they may be

100 (1) Notwithstanding anything in the two next succeeding sub-sections, the Federal Legislature has, and a Provincial Legislature has not, power to make laws with respect to any of the matters enumerated in list I in the seventh schedule to this Act (hereinafter called " the Federal Legislative List ")

(2) Notwithstanding anything in the next succeeding sub-section, the Federal Legislature, and, subject to the preceding sub-section, a Provincial Legislature also, have power to make laws with respect to any of the matters enumerated in list III in the said schedule (hereinafter called " the Concurrent Legislative List ")

(3) Subject to the two preceding sub-sections, the Provincial Legislature has, and the Federal Legislature has not, power to make laws for a Province or any part thereof with respect to any of the matters enumerated in list II in the said schedule (hereinafter called " the Provincial Legislative List ")

(4) The Federal Legislature has power to make laws with respect to matters enumerated in the Provincial Legislative List except for a Province or any part thereof

101 Nothing in this Act shall be construed as empowering the Federal Legislature to make laws for a Federated State otherwise than in accordance with the instrument of accession of that State and any limitations contained therein

102 (1) Notwithstanding anything in the preceding sections of this chapter, the Federal Legislature shall, if the Governor General has in his discretion declared by proclamation (in this Act referred to as " a proclamation of emergency ") that a grave emergency exists whereby the security of India is threatened, whether by war or internal disturbance, have power to make laws for a Province or any part thereof with respect to any of the matters enumerated in the Provincial Legislative List .

Provided that no bill or amendment for the purposes aforesaid shall be introduced or moved without the previous sanction of the Governor-General in his discretion, and the Governor-General shall not give his sanction unless it appears to him that the provision proposed to be made is a proper provision in view of the nature of the emergency

(2) Nothing in this section shall restrict the power of a Provincial Legislature to make any law which under this Act it has power to make, but if any provision of a provincial law is repugnant

to any provision of a Federal law which the Federal Legislature has under this section power to make, the Federal law, whether passed before or after the provincial law, shall prevail, and the provincial law shall to the extent of the repugnancy, but so long only as the Federal law continues to have effect, be void.

(3) A proclamation of emergency—

(a) may be revoked by a subsequent proclamation ;

(b) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament ; and

(c) shall cease to operate at the expiration of 6 months, unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament.

(4) A law made by the Federal Legislature which that Legislature would not but for the issue of a proclamation of emergency have been competent to make shall cease to have effect on the expiration of a period of 6 months after the proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period.

103. If it appears to the Legislatures of two or more Provinces to be desirable that any of the matters enumerated in the Provincial Legislative List should be regulated in those Provinces by Act of the Federal Legislature, and if resolutions to that effect are passed by all the Chambers of those Provincial Legislatures, it shall be lawful for the Federal Legislature to pass an Act for regulating that matter accordingly, but any Act so passed may, as respects any Province to which it applies, be amended or repealed by an Act of the Legislature of that Province.

104. (1) The Governor-General may by public notification empower either the Federal Legislature or a Provincial Legislature to enact a law with respect to any matter not enumerated in any of the lists in the seventh schedule to this Act, including a law imposing a tax not mentioned in any such list, and the executive authority of the Federation or of the Province, as the case may be, shall extend to the administration of any law so made, unless the Governor-General otherwise directs.

(2) In the discharge of his functions under this section the Governor-General shall act in his discretion.

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106. (1) The Federal Legislature shall not by reason only of the entry in the Federal Legislative List relating to the implementing of treaties and agreements with other countries have power to make any law for any Province except with the previous consent of the Governor, or for a Federated State except with the previous consent of the Ruler thereof.

(2) So much of any law as is valid only by virtue of any such entry as aforesaid may be repealed by the Federal Legislature and may, on the treaty or agreement in question ceasing to have effect, be repealed as respects any Province or State by a law of that Province or State

(3) Nothing in this section applies in relation to any law which the Federal Legislature has power to make for a Province or as the case may be, a Federated State, by virtue of any other entry in the Federal or the Concurrent Legislative List as well as by virtue of the said entry

107 (1) If any provision of a provincial law is repugnant to any provision of a Federal law which the Federal Legislature is competent to enact or to any provision of an existing Indian law with respect to one of the matters enumerated in the Concurrent Legislative List, then subject to the provisions of this section, the Federal law, whether passed before or after the provincial law, or, as the case may be the existing Indian law, shall prevail and the provincial law shall, to the extent of the repugnancy, be void

(2) Where a provincial law with respect to one of the matters enumerated in the Concurrent Legislative List contains any provision repugnant to the provisions of an earlier Federal law or an existing Indian law with respect to that matter, then, if the provincial law having been reserved for the consideration of the Governor-General or for the signification of His Majesty's pleasure has received the assent of the Governor General or of His Majesty, the provincial law shall in that Province prevail, but nevertheless the Federal Legislature may at any time enact further legislation with respect to the same matter

Provided that no bill or amendment for making any provision repugnant to any provincial law, which, having been so reserved has received the assent of the Governor General or of His Majesty, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor General in his discretion

(3) If any provision of a law of a Federated State is repugnant to a Federal law which extends to that State, the Federal law, whether passed before or after the law of the State, shall prevail and the law of the State shall, to the extent of the repugnancy, be void

### *Chapter II—Restrictions on Legislative Powers*

108 (1) Unless the Governor General in his discretion thinks fit to give his previous sanction, there shall not be introduced into or moved in, either Chamber of the Federal Legislature, any bill or amendment which—

(a) repeals, amends or is repugnant to any provisions of any Act of Parliament extending to British India, or

(b) repeals, amends or is repugnant to any Governor-General's or Governor's Act, or any ordinance promulgated in his discretion by the Governor-General or a Governor ; or

(c) affects matters as respects which the Governor-General is, by or under this Act, required to act in his discretion ; or

(d) repeals, amends or affects any Act relating to any police force ; or

(e) affects the procedure for criminal proceedings in which European British subjects are concerned ; or

(f) subjects persons not resident in British India to greater taxation than persons resident in British India or subjects companies not wholly controlled and managed in British India to greater taxation than companies wholly controlled and managed therein ; or

(g) affects the grant of relief from any Federal tax on income in respect of income taxed or taxable in the United Kingdom.

(2) Unless the Governor-General in his discretion thinks fit to give his previous sanction, there shall not be introduced into, or moved in, a Chamber of a Provincial Legislature any bill or amendment which—

(a) repeals, amends or is repugnant to any provisions of any Act of Parliament extending to British India ; or

(b) repeals, amends or is repugnant to any Governor-General's Act, or any ordinance promulgated in his discretion by the Governor-General ; or

(c) affects matters as respects which the Governor-General is by or under this Act required to act in his discretion ; or

(d) affects the procedure for criminal proceedings in which European British subjects are concerned, and unless the Governor of the Province in his discretion thinks fit to give his previous sanction, there shall not be introduced or moved any bill or amendment which—

(i) repeals, amends or is repugnant to any Governor's Act, or any ordinance promulgated in his discretion by the Governor ; or

(ii) repeals, amends or affects any Act relating to any police force.

(3) Nothing in this section affects the operation of any other provision in this Act which requires the previous sanction of the Governor-General or of a Governor to the introduction of any bill or the moving of any amendment.

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110. Nothing in this Act shall be taken—

(a) to affect the power of Parliament to legislate for British India, or any part thereof ; or

(b) to empower the Federal Legislature, or any Provincial Legislature—

(i) to make any law affecting the Sovereign or the Royal Family, or the succession to the Crown, or the sovereignty, dominion or suzerainty of the Crown in any part of India, or the law of British nationality, or "The Army Act," "The Air Force Act," or "The Naval Discipline Act," or the law of prize or prize courts, or

(ii) except in so far as is expressly permitted by any subsequent provisions of this Act, to make any law amending any provision of this Act, or any Order in Council made thereunder, or any rules made under this Act by the Secretary of State, or by the Governor General or a Governor in his discretion, or in the exercise of his individual judgment, or

(iii) except in so far as is expressly permitted by any subsequent provisions of this Act, to make any law derogating from any prerogative right of His Majesty to grant special leave to appeal from any court

### *Chapter III —Provisions with Respect to Discrimination, &c*

111 (1) Subject to the provisions of this chapter, a British subject domiciled in the United Kingdom shall be exempt from the operation of so much of any Federal or provincial law as—

(a) imposes any restriction on the right of entry into British India, or

(b) imposes by reference to place of birth, race, descent, language, religion domicile, residence or duration of residence, any disability, liability, restriction or condition in regard to travel residence, the acquisition, holding, or disposal of property, the holding of public office, or the carrying on of any occupation, trade business or profession

Provided that no person shall by virtue of this sub-section be entitled to exemption from any such restriction, condition, liability or disability as aforesaid if and so long as British subjects domiciled in British India are by or under the law of the United Kingdom subject in the United Kingdom to a like restriction, condition liability, or disability imposed in regard to the same subject matter by reference to the same principle of distinction

(2) For the purposes of the preceding sub-section, a provision, whether of the law of British India or of the law of the United Kingdom, empowering any public authority to impose quarantine regulations, or to exclude or deport individuals, wherever domiciled, who appear to that authority to be undesirable persons, shall not be deemed to be a restriction on the right of entry

(3) Notwithstanding anything in this section, if the Governor-General or, as the case may be, the Governor of any Province, by public notification certifies that for the prevention of any grave

menace to the peace or tranquillity of any part of India or, as the case may be, of any part of the Province, or for the purpose of combating crimes of violence intended to overthrow the Government, it is expedient that the operation of the provisions of sub-section (1) of this section should be wholly or partially suspended in relation to any law, then while the notification is in force the operation of those provisions shall be suspended accordingly.

The functions of the Governor-General and of a Governor under this sub-section shall be exercised by him in his discretion.

112. (1) No Federal or provincial law which imposes any liability to taxation shall be such as to discriminate against British subjects domiciled in the United Kingdom or Burma or companies incorporated, whether before or after the passing of this Act, by or under the laws of the United Kingdom or Burma, and any law passed or made in contravention of this section shall, to the extent of the contravention, be invalid.

(2) Without prejudice to the generality of the foregoing provisions, a law shall be deemed to be such as to discriminate against such persons or companies as aforesaid if it would result in any of them being liable to greater taxation than that to which they would be liable if domiciled in British India or incorporated by or under the laws of British India, as the case may be.

(3) For the purposes of this section a company incorporated before the commencement of part III of this Act under any existing Indian law and registered thereunder in Burma shall be deemed to be a company incorporated by or under the laws of Burma.

113. (1) Subject to the following provisions of this chapter, a company incorporated, whether before or after the passing of this Act, by or under the laws of the United Kingdom, and the members of the governing body of any such company and the holders of its shares, stock, debentures, debenture stock or bonds, and its officers, agents, and servants, shall be deemed to comply with so much of any Federal or provincial law as imposes in regard to companies carrying on or proposing to carry on business in British India requirements or conditions relating to or connected with—

(a) the place of incorporation of a company or the situation of its registered office, or the currency in which its capital or loan capital is expressed ; or

(b) the place of birth, race, descent, language, religion, domicile, residence or duration of residence of members of the governing body of a company, or of the holders of its shares, stock, debentures, debenture stock or bonds, or of its officers, agents or servants :

Provided that no company or person shall by virtue of this section be deemed to comply with any such requirement or condition as aforesaid if and so long as a like requirement or condition is imposed by or under the law of the United Kingdom in regard to companies



incorporated by or under the laws of British India and carrying on or proposing to carry on business in the United Kingdom

(2) If and in so far as any total or partial exemption from, or preferential treatment in respect of, taxation imposed on companies by or under any Federal or provincial law depends on compliance with conditions as to any of the matters mentioned in sub-section (1) of this section, any company incorporated by or under the laws of the United Kingdom carrying on business in British India shall be deemed to satisfy those conditions and be entitled to the exemption or preferential treatment accordingly, so long as the taxation imposed by or under the laws of the United Kingdom on companies incorporated by or under the laws of British India and carrying on business in the United Kingdom does not depend on compliance with conditions as to any of the matters so mentioned

114 (1) Subject to the following provisions of this chapter, a British subject domiciled in the United Kingdom shall be deemed to comply with so much of any Federal or provincial law as imposes in regard to companies incorporated or proposed to be incorporated, whether before or after the passing of this Act, by or under the laws of British India, any requirements or conditions relating to, or connected with, the place of birth, race, descent language, religion, domicile, residence or duration of residence of members of the governing body of a company, or of the holders of its shares, stock, debentures, debenture stock or bonds, or of its officers, agents or servants

Provided that no person shall by virtue of this section be deemed to comply with any such requirement or condition as afore said if and so long as a like requirement or condition is imposed by or under the law of the United Kingdom in regard to companies incorporated or proposed to be incorporated by or under the laws of the United Kingdom on British subjects domiciled in British India

(2) If and in so far as, in the case of any such companies as aforesaid, any total or partial exemption from, or preferential treatment in respect of, taxation imposed by or under any Federal or provincial law depends on compliance with conditions as to any of the matters aforesaid, then, so far as regards such members of its governing body and such of the holders of its shares, stock, debentures, debenture stock or bonds, and such of its officers, agents, and servants, as are British subjects domiciled in the United Kingdom any such company shall be deemed to satisfy those conditions and be entitled to the exemption or preferential treatment accordingly, so long as the taxation imposed by or under the laws of the United Kingdom on companies incorporated by or under those laws does not, as regards such of the members of a company's governing body, or such of the holders of its shares, stock, debentures, debenture stock or bonds, or such of its officers, agents, or servants, as are British subjects domiciled in British India, depend on compliance with conditions as to any of the matters aforesaid

(3) For the purposes of this section, but not for the purposes of any other provision of this chapter, a company incorporated before the commencement of part III of this Act under any existing Indian law and registered thereunder in Burma, shall be deemed to be a company incorporated by or under the laws of British India.

115. (1) No ship registered in the United Kingdom shall be subjected by or under any Federal or provincial law to any treatment affecting either the ship herself, or her master, officers, crew, passengers or cargo, which is discriminatory in favour of ships registered in British India except in so far as ships registered in British India are for the time being subjected by or under any law of the United Kingdom to treatment of a like character which is similarly discriminatory in favour of ships registered in the United Kingdom.

(2) This section shall apply in relation to aircraft as it applies in relation to ships.

(3) The provisions of this section are in addition to and not in derogation of the provisions of any of the preceding sections of this chapter.

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## PART VI.—ADMINISTRATIVE RELATIONS BETWEEN FEDERATION, PROVINCES AND STATES

### GENERAL

122. (1) The executive authority of every Province and Federated State shall be so exercised as to secure respect for the laws of the Federal Legislature which apply in that Province or State.

(2) The reference in sub-section (1) of this section to laws of the Federal Legislature shall, in relation to any Province, include a reference to any existing Indian law applying in that Province.

(3) Without prejudice to any of the other provisions of this part of this Act, in the exercise of the executive authority of the Federation in any Province or Federated State regard shall be had to the interests of the Province or State.

123. (1) The Governor-General may direct the Governor of any Province to discharge as his agent, either generally or in any particular case, such functions in and in relation to the tribal areas as may be specified in the direction.

(2) If in any particular case it appears to the Governor-General necessary or convenient so to do, he may direct the Governor of any Province to discharge as his agent such functions in relation to defence, external affairs, or ecclesiastical affairs as may be specified in the direction.

(3) In the discharge of any such functions the Governor shall act in his discretion.

124 (1) Notwithstanding anything in this Act, the Governor-General may, with the consent of the Government of a Province or the Ruler of a Federated State, entrust either conditionally or unconditionally, to that Government or Ruler, or to their respective officers, functions in relation to any matter to which the executive authority of the Federation extends

(2) An act of the Federal Legislature may, notwithstanding that it relates to a matter with respect to which a Provincial Legislature has no power to make laws, confer powers and impose duties upon a Province or officers and authorities thereof

(3) An Act of the Federal Legislature which extends to a Federated State may confer powers and impose duties upon the State or officers and authorities thereof to be designated for the purpose by the Ruler

(4) Where by virtue of this section powers and duties have been conferred or imposed upon a Province or Federated State or officers or authorities thereof, there shall be paid by the Federation to the Province or State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of any extra costs of administration incurred by the Province or State in connection with the exercise of those powers and duties

125 (1) Notwithstanding anything in this Act, agreements may, and, if provision has been made in that behalf by the instrument of accession of the State, shall, be made between the Governor General and the Ruler of a Federated State for the exercise by the Ruler or his officers of functions in relation to the administration in his State of any law of the Federal Legislature which applies therein

(2) An agreement made under this section shall contain provisions enabling the Governor-General in his discretion to satisfy himself, by inspection or otherwise that the administration of the law to which the agreement relates is carried out in accordance with the policy of the Federal Government and, if he is not satisfied, the Governor General acting in his discretion, may issue such directions to the Ruler as he thinks fit

(3) All courts shall take judicial notice of any agreement made under this section

126 (1) The executive authority of every Province shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Federation, and the executive authority of the Federation shall extend to the giving of such directions to a Province as may appear to the Federal Government to be necessary for that purpose

(2) The executive authority of the Federation shall also extend to the giving of directions to a Province as to the carrying into execution therein of any Act of the Federal Legislature which relates to a matter specified in part II of the Concurrent Legislative List and authorises the giving of such directions :

Provided that a bill or amendment which proposes to authorise the giving of any such directions as aforesaid shall not be introduced into or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.

(3) The executive authority of the Federation shall also extend to the giving of directions to a Province as to the construction and maintenance of means of communication declared in the direction to be of military importance :

Provided that nothing in this sub-section shall be taken as restricting the power of the Federation to construct and maintain means of communication as part of its functions with respect to naval, military and air force works.

(4) If it appears to the Governor-General that in any Province effect has not been given to any directions given under this section, the Governor-General, acting in his discretion, may issue as orders to the Governor of that Province either the directions previously given or those directions modified in such manner as the Governor-General thinks proper.

(5) Without prejudice to his powers under the last preceding sub-section, the Governor-General, acting in his discretion, may at any time issue orders to the Governor of a Province as to the manner in which the executive authority thereof is to be exercised for the purpose of preventing any grave menace to the peace or tranquillity of India or of any part thereof.

127. The Federation may, if it deems it necessary to acquire any land situate in a Province for any purpose connected with a matter with respect to which the Federal Legislature has power to make laws, require the Province to acquire the land on behalf, and at the expense, of the Federation or, if the land belongs to the Province, to transfer it to the Federation on such terms as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India.

128. (1) The executive authority of every Federated State shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Federation so far as it is exercisable in the State by virtue of a law of the Federal Legislature which applies therein.

(2) If it appears to the Governor-General that the Ruler of any Federated State has in any way failed to fulfil his obligations under the preceding sub-section, the Governor-General, acting in his discretion, may after considering any representations made to him by the Ruler issue such directions to the Ruler as he thinks fit :

Provided that, if any question arises under this section as to whether the executive authority of the Federation is exercisable in a State with respect to any matter or as to the extent to which it is so exercisable, the question may, at the instance either of the Federation or the Ruler, be referred to the Federal Court for determination by that Court in the exercise of its original jurisdiction under this Act

#### BROADCASTING

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#### INTERFERENCE WITH WATER SUPPLIES

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#### INTER-PROVINCIAL CO OPERATION

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### PART VII—FINANCE, PROPERTY, CONTRACTS AND SUITS

#### *Chapter I—Finance*

#### DISTRIBUTION OF REVENUES BETWEEN THE FEDERATION AND THE FEDERAL UNITS

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#### THE CROWN AND THE STATES

\* \* \*

#### MISCELLANEOUS FINANCIAL PROVISIONS

\* \* \*

#### *Chapter II—Borrowing and Audit*

##### BORROWING

\* \* \*

##### AUDIT AND ACCOUNTS

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#### *Chapter III.—Property, Contracts, Liabilities and Suits*

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### PART VIII—THE FEDERAL RAILWAY AUTHORITY

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## PART IX.—THE JUDICATURE

*Chapter I.—The Federal Court*

200. (1) There shall be a Federal Court consisting of a Chief Justice of India and such number of other judges as His Majesty may deem necessary, but unless and until an address has been presented by the Federal Legislature to the Governor-General for submission to His Majesty praying for an increase in the number of judges, the number of puisne judges shall not exceed six.

(2) Every judge of the Federal Court shall be appointed by His Majesty by warrant under the Royal Sign Manual and shall hold office until he attains the age of 65 years :

Provided that—

(a) a judge may by resignation under his hand addressed to the Governor-General resign his office ;

(b) a judge may be removed from his office by His Majesty by warrant under the Royal Sign Manual on the ground of misbehaviour or of infirmity of mind or body, if the Judicial Committee of the Privy Council, on reference being made to them by His Majesty, report that the judge ought on any such ground to be removed.

(3) A person shall not be qualified for appointment as a judge of the Federal Court unless he—

(a) has been for at least 5 years a judge of a High Court in British India or in a Federated State ; or

(b) is a barrister of England or Northern Ireland of at least 10 years' standing, or a member of the Faculty of Advocates in Scotland of at least 10 years' standing ; or

(c) has been for at least 10 years a pleader of a High Court in British India or in a Federated State or of two or more such courts in succession :

Provided that—

(i) a person shall not be qualified for appointment as Chief Justice of India unless he is, or when first appointed to judicial office was, a barrister, a member of the Faculty of Advocates or a pleader ; and

(ii) in relation to the Chief Justice of India, for the references in paragraphs (b) and (c) of this sub-section to 10 years there shall be substituted references to 15 years.

In computing for the purposes of this sub-section the standing of a barrister or a member of the Faculty of Advocates, or the period during which a person has been a pleader, any period during which a person has held judicial office after he became a barrister, a member of the Faculty of Advocates or a pleader, as the case may be, shall be included.

(4) Every person appointed to be a judge of the Federal Court shall, before he enters upon his office, make and subscribe before the

Governor-General or some person appointed by him an oath according to the form set out in that behalf in the fourth schedule to this Act

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203 The Federal Court shall be a court of record and shall sit in Delhi and at such other place or places, if any, as the Chief Justice of India may, with the approval of the Governor-General, from time to time appoint

204 (1) Subject to the provisions of this Act, the Federal Court shall, to the exclusion of any other court, have an original jurisdiction in any dispute between any two or more of the following parties, that is to say, the Federation, any of the Provinces or any of the Federated States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends

Provided that the said jurisdiction shall not extend to—

(a) a dispute to which a State is a party, unless the dispute—

(i) concerns the interpretation of this Act or of an Order in Council made thereunder, or the extent of the legislative or executive authority vested in the Federation by virtue of the instrument of accession of that State, or

(ii) arises under an agreement made under part VI of this Act in relation to the administration in that State of a law of the Federal Legislature, or otherwise concerns some matter with respect to which the Federal Legislature has power to make laws for that State, or

(iii) arises under an agreement made after the establishment of the Federation, with the approval of His Majesty's representative for the exercise of the functions of the Crown in its relations with Indian States, between that State and the Federation or a Province, being an agreement which expressly provides that the said jurisdiction shall extend to such a dispute,

(b) a dispute arising under any agreement which expressly provides that the said jurisdiction shall not extend to such a dispute

(2) *The Federal Court in the exercise of its original jurisdiction shall not pronounce any judgment other than a declaratory judgment*

205 (1) An appeal shall lie to the Federal Court from any judgment, decree or final order of a High Court in British India, if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Act or any Order in Council made thereunder, and it shall be the duty of every High Court in British India to consider in every case whether or not any such question is involved and of its own motion to give or to withhold a certificate accordingly

(2) *Where such a certificate is given, any party in the case may appeal to the Federal Court on the ground that any such question as aforesaid has been wrongly decided, and on any ground on which*

that party could have appealed without special leave to His Majesty in Council if no such certificate had been given, and, with the leave of the Federal Court, on any other ground, and no direct appeal shall lie to His Majesty in Council, either with or without special leave.

206. (1) The Federal Legislature may by Act provide that in such civil cases as may be specified in the Act an appeal shall lie to the Federal Court from a judgment decree or final order of a High Court in British India without any such certificate as aforesaid, but no appeal shall lie under any such Act unless—

(a) the amount or value of the subject matter of the dispute in the court of first instance and still in dispute on appeal was and is not less than 50,000 rupees or such other sum not less than 15,000 rupees as may be specified by the Act, or the judgment decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value ; or

(b) the Federal Court gives special leave to appeal.

(2) If the Federal Legislature makes such provision as is mentioned in the last preceding sub-section, consequential provision may also be made by Act of the Federal Legislature for the abolition in whole or in part of direct appeals in civil cases from High Courts in British India to His Majesty in Council, either with or without special leave.

(3) A bill or amendment for any of the purposes specified in this section shall not be introduced into, or moved in, either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.

207. (1) An appeal shall lie to the Federal Court from a High Court in a Federated State on the ground that a question of law has been wrongly decided, being a question which concerns the interpretation of this Act or of an Order in Council made thereunder or the extent of the legislative or executive authority vested in the Federation by virtue of the instrument of accession of that State, or arises under an agreement made under part VI of this Act in relation to the administration in that State of a law of the Federal Legislature.

(2) An appeal under this section shall be by way of special case to be stated for the opinion of the Federal Court by the High Court, and the Federal Court may require a case to be so stated, and may return any case so stated in order that further facts may be stated therein.

208. An appeal may be brought to His Majesty in Council from a decision of the Federal Court—

(a) from any judgment of the Federal Court given in the exercise of its original jurisdiction in any dispute which concerns the interpretation of this Act or of an Order in Council made thereunder, or the extent of the legislative or executive authority vested in the Federation by virtue of the instrument of accession of any State, or



arises under an agreement made under part VI of this Act in relation to the administration in any State of a law of the Federal Legislature without leave, and

(b) in any other case, by leave of the Federal Court or of His Majesty in Council

209 (1) The Federal Court shall, where it allows an appeal, remit the case to the court from which the appeal was brought with a declaration as to the judgment, decree or order which is to be substituted for the judgment, decree or order appealed against, and the court from which the appeal was brought shall give effect to the decision of the Federal Court

(2) Where the Federal Court upon any appeal makes any order as to the costs of the proceedings in the Federal Court, it shall, as soon as the amount of the costs to be paid is ascertained, transmit its order for the payment of that sum to the court from which the appeal was brought and that court shall give effect to the order

(3) The Federal Court may, subject to such terms or conditions as it may think fit to impose, order a stay of execution in any case under appeal to the court, pending the hearing of the appeal and execution shall be stayed accordingly

210 (1) All authorities, civil and judicial, throughout the Federation, shall act in aid of the Federal Court

(2) The Federal Court shall, as respects British India and the Federated States, have power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents or the investigation or punishment of any contempt of court, which any High Court in British India has power to make as respects the territory within its jurisdiction, and any such orders and any orders of the Federal Court as to the costs of and incidental to any proceedings therein shall be enforceable by all courts and authorities in every part of British India or of any Federated State as if they were orders duly made by the highest court exercising civil or criminal jurisdiction as the case may be, in that part

(3) Nothing in this section—

(a) shall apply to any such order with respect to costs as is mentioned in sub section (2) of the last preceding section, or

(b) shall, as regards a Federated State, apply in relation to any jurisdiction exercisable by the Federal Court by reason only of the making by the Federal Legislature of such provision as is mentioned in this chapter for enlarging the appellate jurisdiction of the Federal Court

211 Where in any case the Federal Court require a special case to be stated or restated by, or remit a case to, or order a stay of execution in a case from, a High Court in a Federated State, or require the aid of the civil or judicial authorities in a Federated State, the Federal Court shall cause letters of request in that behalf

to be sent to the Ruler of the State, and the Ruler shall cause such communication to be made to the High Court or to any judicial or civil authority as the circumstances may require.

212. The law declared by the Federal Court and by any judgment of the Privy Council shall, so far as applicable, be recognised as binding on, and shall be followed by, all courts in British India, and, so far as respects the application and interpretation of this Act or any Order in Council thereunder or any matter with respect to which the Federal Legislature has power to make laws in relation to the State, in any Federated State.

213. (1) If at any time it appears to the Governor-General that a question of law has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Federal Court upon it, he may in his discretion refer the question to that court for consideration, and the court may, after such hearing as they think fit, report to the Governor-General thereon.

(2) No report shall be made under this section save in accordance with an opinion delivered in open court with the concurrence of a majority of the judges present at the hearing of the case, but nothing in this sub-section shall be deemed to prevent a judge who does not concur from delivering a dissenting opinion.

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216. (1) The administrative expenses of the Federal Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the revenues of the Federation, and any fees or other moneys taken by the court shall form part of those revenues.

(2) The Governor-General shall exercise his individual judgment as to the amount to be included in respect of the administrative expenses of the Federal Court in any estimates of expenditure laid by him before the Chambers of the Federal Legislature.

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## *Chapter II.—The High Courts in British India*

219. (1) The following courts shall in relation to British India be deemed to be High Courts for the purposes of this Act, that is to say, the High Courts in Calcutta, Madras, Bombay, Allahabad, Lahore, and Patna, the Chief Court in Oudh, the Judicial Commissioner's Courts in the Central Provinces and Berar, in the North-West Frontier Province and in Sind, any other court in British India constituted or reconstituted under this chapter as a High Court, and any other comparable court in British India which

His Majesty in Council may declare to be a High Court for the purposes of this Act :

Provided that, if provision has been made before the commencement of part III of this Act for the establishment of a High Court to replace any court or courts mentioned in this sub-section, then as from the establishment of the new court this section shall have effect as if the new court were mentioned therein in lieu of the court or courts so replaced.

(2) The provisions of this chapter shall apply to every High Court in British India.

220 (1) Every High Court shall be a court of record and shall consist of a Chief Justice and such other judges as His Majesty may from time to time deem it necessary to appoint :

Provided that the judges so appointed together with any additional judges appointed by the Governor-General in accordance with the following provisions of this chapter shall at no time exceed in number such maximum number as His Majesty in Council may fix in relation to that court.

(2) Every judge of a High Court shall be appointed by His Majesty by warrant under the Royal Sign Manual and shall hold office until he attains the age of 60 years :

Provided that—

(a) a judge may by resignation under his hand addressed to the Governor resign his office ;

(b) a judge may be removed from his office by His Majesty by warrant under the Royal Sign Manual on the ground of misbehaviour or of infirmity of mind or body, if the Judicial Committee of the Privy Council, on reference being made to them by His Majesty, report that the judge ought on any such ground to be removed.

(3) A person shall not be qualified for appointment as a judge of a High Court unless he—

(a) is a barrister of England or Northern Ireland, of at least 10 years' standing, or a member of the Faculty of Advocates in Scotland of at least 10 years' standing, or

(b) is a member of the Indian Civil Service of at least 10 years' standing, who has for at least 3 years served as, or exercised the powers of, a district judge ; or

(c) has for at least 5 years held a judicial office in British India not inferior to that of a subordinate judge, or judge of a small cause court ; or

(d) has for at least 10 years been a pleader of any High Court, or of two or more such courts in succession :

Provided that a person shall not, unless he is, or when first appointed to judicial office was, a barrister, a member of the Faculty of Advocates or a pleader, be qualified for appointment as Chief

Justice of any High Court constituted by letters patent until he has served for not less than 3 years as a judge of a High Court.

In computing for the purposes of this sub-section the standing of a barrister or a member of the Faculty of Advocates, or the period during which a person has been a pleader, any period during which the person has held judicial office after he became a barrister, a member of the Faculty of Advocates, or a pleader, as the case may be, shall be included.

(4) Every person appointed to be a judge of a High Court shall, before he enters upon his office, make and subscribe before the Governor or some person appointed by him an oath according to the form set out in that behalf in the fourth schedule to this Act.

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227. All proceedings in every High Court shall be in the English language.

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## PART X.—THE SERVICES OF THE CROWN IN INDIA

### *Chapter I.—Defence Services*

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### *Chapter II.—Civil Services*

#### GENERAL PROVISIONS

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241. (1) Except as expressly provided by this Act, appointments to the civil services of, and civil posts under, the Crown in India, shall, after the commencement of part III of this Act, be made—

(a) in the case of services of the Federation, and posts in connection with the affairs of the Federation, by the Governor-General or such person as he may direct ;

(b) in the case of services of a Province, and posts in connection with the affairs of a Province, by the Governor or such person as he may direct.

(2) Except as expressly provided by this Act, the conditions of service of persons serving His Majesty in a civil capacity in India shall, subject to the provisions of this section, be such as may be prescribed—

(a) in the case of persons serving in connection with the affairs of the Federation, by rules made by the Governor-General or by some person or persons authorised by the Governor-General to make rules for the purpose ;

(b) in the case of persons serving in connection with the affairs of a Province, by rules made by the Governor of the Province or by some person or persons authorised by the Governor to make rules for the purpose

Provided that it shall not be necessary to make rules regulating the conditions of service of persons employed temporarily on the terms that their employment may be terminated on one month's notice or less, and nothing in this sub section shall be construed as requiring the rules regulating the conditions of service of any class of persons to extend to any matter which appears to the rule making authority to be a matter not suitable for regulation by rule in the case of that class

(3) The said rules shall be so framed as to secure—

(a) that in the case of a person who before the commencement of part III of this Act was serving His Majesty in a civil capacity in India no order which alters or interprets to his disadvantage any rule by which his conditions of service are regulated shall be made except by an authority which would have been competent to make such an order on the 8th day of March, 1926, or by some person empowered by the Secretary of State to give directions in that respect

(b) that every such person as aforesaid shall have the same rights of appeal to the same authorities from any order which—

(i) punishes or formally censures him, or

(ii) alters or interprets to his disadvantage any rule by which his conditions of service are regulated, or

(iii) terminates his appointment otherwise than upon his reaching the age fixed for superannuation

as he would have had immediately before the commencement of part III of this Act, or such similar rights of appeal to such corresponding authorities as may be directed by the Secretary of State or by some person empowered by the Secretary of State or by some person empowered by the Secretary of State to give directions in that respect,

(c) that every other person serving His Majesty in a civil capacity in India shall have at least one appeal against any such order as aforesaid, not being an order of the Governor General or a Governor

(4) Notwithstanding anything in this section, but subject to any other provision of this Act, Acts of the appropriate Legislature in India may regulate the conditions of service of persons serving His Majesty in a civil capacity in India, and any rules made under this section shall have effect subject to the provisions of any such Act

Provided that nothing in any such Act shall have effect so as to deprive any person of any rights required to be given to him by the provisions of the last preceding sub section

(5) No rules made under this section and no Act of any Legislature in India shall be construed to limit or abridge the power of the Governor-General or a Governor to deal with the case of any person serving His Majesty in a civil capacity in India in such manner as may appear to him to be just and equitable :

Provided that, where any such rules or Act is applicable to the case of any person, the case shall not be dealt with in any manner less favourable to him than that provided by that rule or Act.

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#### RECRUITMENT BY SECRETARY OF STATE AND PROVISIONS AS TO CERTAIN POSTS

244. (1) As from the commencement of part III of this Act appointments to the civil services known as "the Indian Civil Service", "the Indian Medical Service (Civil)", and "the Indian Police Service" (which last mentioned service shall thereafter be known as "the Indian Police") shall, until Parliament otherwise determines, be made by the Secretary of State.

(2) Until Parliament otherwise determines, the Secretary of State may also make appointments to any service or services which at any time after the said date he may deem it necessary to establish for the purpose of securing the recruitment of suitable persons to fill civil posts in connection with the discharge of any functions of the Governor-General which the Governor-General is by or under this Act required to exercise in his discretion.

(3) The respective strengths of the said services shall be such as the Secretary of State may from time to time prescribe, and the Secretary of State shall in each year cause to be laid before each House of Parliament a statement of the appointments made thereto and the vacancies therein.

(4) It shall be the duty of the Governor-General to keep the Secretary of State informed as to the operation of this section, and he may after the expiration of such period as he thinks fit make recommendations for the modification thereof.

In discharging his functions under this sub-section, the Governor-General shall act in his discretion.

245. Until Parliament otherwise determines, the Secretary of State may for the purpose of securing efficiency in irrigation in any Province, appoint persons to any civil service of, or civil post under, the Crown in India concerned with irrigation.

246. (1) The Secretary of State shall make rules specifying the number and character of the civil posts under the Crown (other than posts in connection with any functions of the Governor-General which the Governor-General is by or under this Act required to exercise in his discretion), which, subject to the provisions of this

sub-section, are to be filled by persons appointed by the Secretary of State to a civil service of, or a civil post under, the Crown in India, and except under such conditions as may be prescribed in the rules no such post shall, without the previous sanction of the Secretary of State—

(a) be kept vacant for more than 3 months, or  
(b) be filled otherwise than by the appointment of such a person as aforesaid, or

(c) be held jointly with any other such post

(2) Appointments and postings to the said posts (hereinafter in this part of this Act referred to as "reserved posts") shall—

(a) in the case of posts in connection with the affairs of the Federation, be made by the Governor General, exercising his individual judgment,

(b) in the case of posts in connection with the affairs of a Province, be made by the Governor of the Province, exercising his individual judgment

(3) All rules made under this section shall, so soon as may be after they are made, be laid before each House of Parliament and, if either House of Parliament within the next subsequent 28 days on which that House has sat after any such rule has been laid before it resolves that the rule shall be annulled, the rule shall thenceforth be void but without prejudice to the validity of anything previously done thereunder or to the making of a new rule

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PROVISIONS AS TO PERSONS APPOINTED BY SECRETARY OF STATE IN  
COUNCIL, PERSONS HOLDING RESERVED POSTS AND COMMISSIONED  
OFFICERS IN CIVIL EMPLOYMENT

\* \* \*

SPECIAL PROVISIONS AS TO STAFFS OF THE HIGH COMMISSIONER FOR  
INDIA AND THE AUDITOR OF INDIAN HOME ACCOUNTS

\* \* \*

SPECIAL PROVISIONS AS TO JUDICIAL OFFICERS

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SPECIAL PROVISIONS AS TO POLITICAL DEPARTMENT

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PROVISIONS FOR THE PROTECTION OF CERTAIN EXISTING OFFICERS

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## MISCELLANEOUS

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*Chapter III.—Public Service Commissions*

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*Chapter IV.—Chaplains*

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*Chapter V.—General*

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PART XI.—THE SECRETARY OF STATE, HIS ADVISERS  
AND HIS DEPARTMENT

278. (1) There shall be a body of persons appointed by the Secretary of State, not being less than three nor more than six in number, as the Secretary of State may from time to time determine, whose duty it shall be to advise the Secretary of State on any matter relating to India on which he may desire their advice.

(2) One-half at least of the persons for the time being holding office under this section as advisers of the Secretary of State shall be persons who have held office for at least 10 years under the Crown in India and have not last ceased to perform in India official duties under the Crown more than 2 years before the date of their respective appointments as advisers under this section.

(3) Any person appointed as an adviser to the Secretary of State shall hold office for a term of 5 years and shall not be eligible for reappointment :

Provided that—

(a) any person so appointed may by writing under his hand resign his office to the Secretary of State ;

(b) the Secretary of State may, if he is satisfied that any person so appointed has by reason of infirmity of mind or body become unfit to continue to hold his office, by order remove him from his office.

(4) A person for the time being holding office as adviser to the Secretary of State shall not be capable of sitting or voting in either House of Parliament.

(5) There shall be paid out of moneys provided by Parliament to each of the advisers of the Secretary of State a salary of £1,350 a year, and also to any of them who at the date of his appointment was domiciled in India a subsistence allowance of £600 a year.



(6) Except as otherwise expressly provided in this Act, it shall be in the discretion of the Secretary of State whether or not he consults with his advisers on any matter, and, if so, whether he consults with them collectively or with one or more of them individually, and whether or not he acts in accordance with any advice given to him by them

(7) Any provision of this Act which requires that the Secretary of State shall obtain the concurrence of his advisers shall be deemed to be satisfied if at a meeting of his advisers he obtained the concurrence of at least one half of those present at the meeting or if such notice and opportunity for objection as may be prescribed has been given to those advisers and none of them has required that a meeting shall be held for discussion of the matter

In this sub section "prescribed" means prescribed by rules of business made by the Secretary of State after obtaining at a *meeting of his advisers the concurrence of at least one half of those present at the meeting*

(8) The Council of India as existing immediately before the commencement of part III of this Act shall be dissolved

(9) Notwithstanding anything in the foregoing provisions of this section a person who immediately before the commencement of part III of this Act was a member of the Council of India may be appointed under this section as an adviser to the Secretary of State to hold office as such for such period less than 5 years as the Secretary of State may think fit

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## PART XII—MISCELLANEOUS AND GENERAL

### THE CROWN AND THE INDIAN STATES

285 Subject in the case of a Federated State to the provisions of the instrument of accession of that State, nothing in this Act affects the rights and obligations of the Crown in relation to any Indian State

286 (1) If His Majesty's representative for the exercise of the functions of the Crown in its relations with Indian States requests the assistance of armed forces for the due discharge of those functions it shall be the duty of the Governor General in the exercise of the executive authority of the Federation to cause the necessary forces to be employed accordingly, but the net additional expenses, if any, incurred in connection with those forces by reason of that employment shall be deemed to be expenses of His Majesty incurred in discharging the said functions of the Crown

(2) In discharging his functions under this section the Governor General shall act in his discretion

287. Arrangements may be made between His Majesty's representative for the exercise of the functions of the Crown in its relations with Indian States and the Governor of any Province for the discharge by the Governor and officers serving in connection with the affairs of the Province of powers and duties in connection with the exercise of the said functions of the Crown.

ADEN

288. (1) On such date<sup>(1)</sup> as His Majesty may by Order in Council appoint (in this section referred to as "the appointed day") the then existing Chief Commissioner's Province of Aden (in this section referred to as "Aden") shall cease to be a part of British India.

(2) At any time after the passing of this Act it shall be lawful for His Majesty in Council to make such provision as he deems proper for the government of Aden after the appointed day, and any such Order in Council may delegate to any person or persons within Aden power to make laws for the peace, order and good government of Aden, without prejudice to the power of His Majesty in Council, notwithstanding such delegation, from time to time to make laws for any of the purposes aforesaid.

(3) An Order made by His Majesty in Council by virtue of the preceding sub-section may, without prejudice to the generality of the words of that sub-section, contain provisions with respect to—

(a) the continuing validity of all Acts, orders, ordinances and regulations in force in Aden immediately before the appointed day ;

(b) the continuing validity of lawful acts done by any authority in Aden before the appointed day ;

(c) the validity and continuance of proceedings commenced before the appointed day in any court of justice in, or having jurisdiction in, Aden ; and

(d) the enforcement by or against the Government of Aden of claims which, if this Act had not been passed, might have been enforced by or against the Secretary of State in Council in connection with the administration of Aden.

(4) If any such Order is made, it shall confer appellate jurisdiction from courts in Aden upon such court in India as may be specified in the Order, and it shall be the duty of any court in India upon which jurisdiction is so conferred to exercise that jurisdiction, and such contribution, if any, as His Majesty in Council may determine shall be paid out of the revenues of Aden towards the expenses of that court.

The Order shall also make provision specifying the cases in which an appeal from that court in India may be brought to His Majesty in Council.

(5) Any property which immediately before the separation of Aden from India was vested in His Majesty for the purposes of the

<sup>(1)</sup> April 1, 1937.

Government of India and either was then situate in Aden, or, by virtue of any delegation from the Secretary of State in Council or otherwise, was then in the possession, or under the control of, or held on account of, the local Government of Aden, shall, as from the said separation, vest in His Majesty for the purposes of the Government of Aden and any contract made or liability incurred by or on behalf of the Secretary of State in Council before the said separation solely for a purpose which will after the separation be a purpose of the Government of Aden shall, as from the separation have effect as if it had been made or incurred by or on behalf of the Government of Aden

NEW PROVINCES AND ALTERATIONS OF BOUNDARIES  
OF PROVINCES

289 (1) As from such date<sup>(1)</sup> as His Majesty may by Order in Council appoint—

(a) Sind shall be separated from the Presidency of Bombay and shall form a Governor's Province to be known as "the Province of Sind",

(b) Orissa and such other areas in the Province of Bihar and Orissa as may be specified in the Order of His Majesty shall be separated from that Province, and such areas as may be specified in the said Order shall be separated from the Presidency of Madras and the Central Provinces respectively, and Orissa and the other areas so separated shall together form a Governor's Province to be known as "the Province of Orissa", and

(c) the Province formerly known as "Bihar and Orissa" shall be known as "the Province of Bihar"

(2) An Order in Council made under this section shall define the boundaries of the Provinces of Sind and Orissa and may contain—

(a) such provisions for their government and administration during the period before part III of this Act comes into operation,

(b) such provisions for varying during the said period the composition of the local Legislature of any Presidency or Province the boundaries of which are altered under this section,

(c) such provisions with respect to the laws which, subject to amendment or repeal by the Provincial or, as the case may be, the Federal Legislature, are to be in force in, or in any part of, Sind or Orissa respectively,

(d) in the case of Orissa, such provisions with respect to the jurisdiction therein of any court theretofore exercising the jurisdiction of a High Court, either generally or for any particular purpose, in any area to be included in the Province,

(e) such provisions with respect to apportionments and adjustments of and in respect of assets and liabilities, and

(f) such supplemental, incidental and consequential provisions, as His Majesty may deem necessary or proper

(<sup>1</sup>) April 1 1936

(3) Subject to the provisions of any such Order as aforesaid, the Governor-General in Council may, until the date<sup>(1)</sup> on which part III of this Act comes into operation, exercise in relation to the Provinces of Sind and Orissa and any Presidency or Province the boundaries of which are altered under this section any powers which he might have exercised if the said new Provinces had been constituted, or those boundaries had been altered, under the provisions in that behalf contained in "The Government of India Act."

(4) In this Act the expression "the Legislative Council of the Province" when used in relation to a date before the commencement of part III of this Act shall in the case of Sind and Orissa be deemed to refer to the Legislative Councils of Bombay and of Bihar or Bihar and Orissa respectively.

290. (1) Subject to the provisions of this section, His Majesty may by Order in Council—

- (a) create a new Province ;
- (b) increase the area of any Province ;
- (c) diminish the area of any Province ;
- (d) alter the boundaries of any Province :

Provided that, before the draft of any such Order is laid before Parliament, the Secretary of State shall take such steps as His Majesty may direct for ascertaining the views of the Federal Government and the Chambers of the Federal Legislature and the views of the Government and the Chamber or Chambers of the Legislature of any Province which will be affected by the Order, both with respect to the proposal to make the Order and with respect to the provisions to be inserted therein.

(2) An Order made under this section may contain such provisions for varying the representation in the Federal Legislature of any Governor's Province the boundaries of which are altered by the Order and for varying the composition of the Legislature of any such Province, such provisions with respect to apportionments and adjustments of and in respect of assets and liabilities, and such other supplemental, incidental and consequential provisions as His Majesty may deem necessary or proper :

Provided that no such Order shall vary the total membership of either Chamber of the Federal Legislature.

(3) In this section the expression "Province" means either a Governor's Province or a Chief Commissioner's Province.

#### FRANCHISE

291. In so far as provision with respect to the matters hereinafter mentioned is not made by this Act, His Majesty in Council may

<sup>(1)</sup> April 1, 1937.

from time to time make provision with respect to those matters or any of them, that is to say—

(a) the delimitation of territorial constituencies for the purpose of elections under this Act ,

(b) the qualifications entitling persons to vote in territorial or other constituencies at such elections, and the preparation of electoral rolls ,

(c) the qualifications for being elected at such elections as a member of a legislative body ,

(d) the filling of casual vacancies in any such body ,

(e) the conduct of elections under this Act and the methods of voting thereat ,

(f) the expenses of candidates at such elections ,

(g) corrupt practices and other offences at or in connection with such elections ,

(h) the decision of doubts and disputes arising out of, or in connection with such elections ,

(i) matters ancillary to any such matter as aforesaid

#### PROVISIONS AS TO CERTAIN LEGAL MATTERS

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294 (1) Neither the executive authority of the Federation nor the legislative power of the Federal Legislature shall extend to any area in a Federated State which His Majesty in signifying his acceptance of the instrument of accession of that State may declare to be an area theretofore administered by or on behalf of His Majesty to which it is expedient that the provisions of this sub section should apply, and references in this Act to a Federated State shall not be construed as including references to any such area

Provided that—

(a) a declaration shall not be made under this sub-section with respect to any area unless, before the execution by the Ruler of the instrument of accession, notice has been given to him of His Majesty's intention to make that declaration ,

(b) if His Majesty with the assent of the Ruler of the State relinquishes his powers and jurisdiction in relation to any such area or any part of any such area, the foregoing provisions of this sub section shall cease to apply to that area or part, and the executive authority of the Federation and the legislative power of the Federal Legislature shall extend thereto in respect of such matters and subject to such limitations as may be specified in a supplementary instrument of accession for the State

Nothing in this sub section applies to any area if it appears to His Majesty that jurisdiction to administer the area was granted to him solely in connection with a railway

(2) Subject as aforesaid and to the following provisions of this section, if, after the accession of a State becomes effective, power or jurisdiction therein with respect to any matter is, by virtue of the instrument of accession of the State, exercisable, either generally or subject to limits, by the Federation, the Federal Legislature, the Federal Court, the Federal Railway Authority, or a court or an authority exercising the power or jurisdiction by virtue of an Act of the Federal Legislature, or is, by virtue of an agreement made under part VI of this Act in relation to the administration of a law of the Federal Legislature, exercisable, either generally or subject to limits, by the Ruler or his officers, then any power or jurisdiction formerly exercisable on His Majesty's behalf in that State, whether by virtue of "The Foreign Jurisdiction Act, 1890,"<sup>(1)</sup> or otherwise, shall not be exercisable in that State with respect to that matter or, as the case may be, with respect to that matter within those limits.

(3) So much of any law as by virtue of any power exercised by or on behalf of His Majesty to make laws in a State is in force in a Federated State immediately before the accession of the State becomes effective and might by virtue of the instrument of accession of the State be re-enacted for that State by the Federal Legislature, shall continue in force and be deemed for the purposes of this Act to be a Federal law so re-enacted.

Provided that any such law may be repealed or amended by Act of the Federal Legislature and unless continued in force by such an Act shall cease to have effect on the expiration of 5 years from the date when the accession of the State becomes effective.

(4) Subject as aforesaid, the powers and jurisdiction exercisable by or on behalf of His Majesty before the commencement of part III of this Act in Indian States shall continue to be exercisable, and any Order in Council with respect to the said powers or jurisdiction made under "The Foreign Jurisdiction Act, 1890," or otherwise, and all delegations, rules and orders made under any such Order, shall continue to be of full force and effect until the Order is amended or revoked by a subsequent Order :

Provided that nothing in this sub-section shall be construed as prohibiting His Majesty from relinquishing any power or jurisdiction in any Indian State.

(5) An Order in Council made by virtue and in exercise of the powers by "The Foreign Jurisdiction Act, 1890," or otherwise in His Majesty vested, empowering any person to make rules and orders in respect of courts or administrative authorities acting for any territory shall not be invalid by reason only that it confers, or delegates powers to confer, on courts or administrative authorities power to sit or act outside the territory in respect of which they have jurisdiction or functions, or that it confers, or delegates power

<sup>(1)</sup> *State Papers*, Vol. LXXXII, page 656.

to confer, appellate jurisdiction or functions on courts or administrative authorities sitting or acting outside the territory

(6) In "The Foreign Jurisdiction Act, 1890," the expression "a British court in a foreign country" shall, in relation to any part of India outside British India, include any person duly exercising on behalf of His Majesty any jurisdiction, civil or criminal, original or appellate, whether by virtue of an Order in Council or not, and for the purposes of section 9 of that Act the Federal Court shall, as respects appellate jurisdiction in cases tried by a British court in a Federated State, be deemed to be a court held in a British possession or under the authority of His Majesty

(7) Nothing in this Act shall be construed as limiting any right of His Majesty to determine by what courts British subjects and subjects of foreign countries shall be tried in respect of offences committed in Indian States

(8) Nothing in this section affects the provisions of this Act with respect to Berar

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297 (1) No Provincial Legislature or Government shall—

(a) by virtue of the entry in the Provincial Legislative List relating to trade and commerce within the Province, or the entry in that list relating to the production, supply, and distribution of commodities, have power to pass any law or take any executive action prohibiting or restricting the entry into, or export from, the Province of goods of any class or description, or

(b) by virtue of anything in this Act have power to impose any tax, cess toll, or due which, as between goods manufactured or produced in the Province and similar goods not so manufactured or produced, discriminates in favour of the former, or which, in the case of goods manufactured or produced outside the Province, discriminates between goods manufactured or produced in one locality and similar goods manufactured or produced in another locality

(2) Any law passed in contravention of this section shall, to the extent of the contravention, be invalid

298 (1) No subject of His Majesty domiciled in India shall on grounds only of religion, place of birth, descent, colour or any of them be ineligible for office under the Crown in India, or be prohibited on any such grounds from acquiring, holding or disposing of property or carrying on any occupation, trade, business or profession in British India

(2) Nothing in this section shall affect the operation of any law which—

(a) prohibits, either absolutely or subject to exceptions, the sale or mortgage of agricultural land situate in any particular area, and

owned by a person belonging to some class recognised by the law as being a class of persons engaged in or connected with agriculture in that area, to any person not belonging to any such class ; or

(b) recognises the existence of some right, privilege or disability attaching to members of a community by virtue of some personal law or custom having the force of law.

(3) Nothing in this section shall be construed as derogating from the special responsibility of the Governor-General or of a Governor for the safeguarding of the legitimate interests of minorities.

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#### HIGH COMMISSIONER

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#### GENERAL PROVISIONS

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#### INTERPRETATION

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### PART XIII.—TRANSITIONAL PROVISIONS

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### PART XIV.—COMMENCEMENT, REPEALS, &c.

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## SCHEDULES

### *First Schedule.—Composition of the Federal Legislature*

#### PART I.—REPRESENTATIVES OF BRITISH INDIA

##### *General Qualification for Membership*

1. A person shall not be qualified to be chosen as a representative of British India to fill a seat in the Federal Legislature unless he—

(a) is a British subject, or the Ruler or a subject of an Indian State which has acceded to the Federation ; and

(b) is, in the case of a seat in the Council of State, not less than 30 years of age and, in the case of a seat in the Federal Assembly, not less than 25 years of age ; and

(c) possesses such, if any, of the other qualifications specified



in, or prescribed under, this part of this schedule as may be appropriate in his case

Provided that the Ruler or a subject of an Indian State which has not acceded to the Federation—

(i) shall not be disqualified under sub paragraph (a) of this paragraph to fill a seat allocated to a Province if he would be eligible to be elected to the Legislative Assembly of that Province, and

(ii) in such cases as may be prescribed, shall not be disqualified under the said sub paragraph (a) to fill a seat allocated to a Chief Commissioner's Province

2 Upon the expiration of the term for which he is chosen to serve as a member of the Federal Legislature, a person if otherwise duly qualified, shall be eligible to be chosen to serve for a further term

### *The Council of State*

3 Of the 156 seats in the Council of State to be filled by representatives of British India 150 seats shall be allocated to the Governors Provinces, the Chief Commissioners' Provinces and the Anglo-Indian, European and Indian Christian communities in the manner shown in division (i) of the relevant Table of Seats appended to this part of this schedule, and 6 seats shall be filled by persons chosen by the Governor-General in his discretion

4 To each Governor's Province, Chief Commissioner's Province and community specified in the first column of division (i) of the Table there shall be allotted the number of seats specified in the second column opposite to that Province or community, and of the seats so allotted to a Governor's Province or a Chief Commissioner's Province, the number specified in the third column shall be general seats, the number specified in the fourth column shall be seats for representatives of the scheduled castes, the number specified in the fifth column shall be Sikh seats, the number specified in the sixth column shall be Muhammadan seats, and the number specified in the seventh column shall be seats reserved for women

5 A Governor's Province or a Chief Commissioner's Province, exclusive of any portion thereof which His Majesty in Council may deem unsuitable for inclusion in any constituency or in any constituency of any particular class, shall be divided into territorial constituencies—

(a) for the election of persons to fill the general seats, if any,

(b) for the election of persons to fill the Sikh seats, if any, and

(c) for the election of persons to fill the Muhammadan seats if any,

or, if as respects any class of constituency it is so prescribed, may form one territorial constituency

To each territorial constituency of any class one or more seats of that class shall be assigned

6. (1) No person shall be entitled to vote at an election to fill a Sikh seat or a Muhammadan seat in the Council of State unless he is a Sikh or a Muhammadan, as the case may be.

(2) No person who is, or is entitled to be, included in the electoral roll for a territorial constituency in any Province for the election of persons to fill a Sikh seat or a Muhammadan seat in the Council of State shall be entitled to vote at an election to fill a general seat therein allotted to that Province.

(3) No Anglo-Indian, European or Indian Christian shall be entitled to vote at an election to fill a general seat in the Council of State.

(4) Subject as aforesaid, the qualifications entitling persons to vote in territorial constituencies at elections of members of the Council of State shall be such as may be prescribed.

7. Nothing in the two last preceding paragraphs shall apply in relation to British Baluchistan, and a person to fill the seat in the Council of State allotted to that Province shall be chosen in such manner as may be prescribed.

8. In any Province to which a seat to be filled by a representative of the scheduled castes is allotted, a person to fill that seat shall be chosen by the members of those castes who hold seats in the Chamber or, as the case may be, either Chamber of the Legislature of that Province.

9. In any Province to which a seat reserved for women is allotted, a woman to fill that seat shall be chosen by the persons, whether men or women, who hold seats in the Chamber or, as the case may be, the Chambers of the Legislature of that Province.

10. Persons to fill the seats allotted to the Anglo-Indian, European and Indian Christian communities shall be chosen by the members of electoral colleges consisting of such Anglo-Indians, Europeans and Indian Christians, as the case may be, as are members of the Legislative Council of any Governor's Province or of the Legislative Assembly of any Governor's Province.

The rules regulating the conduct of elections by the European electoral college shall be such as to secure that on any occasion where more than one seat falls to be filled by the college no two of the seats to be then filled shall be filled by persons who are normally resident in the same Province.

11. A person shall not be qualified to hold a seat in the Council of State unless—

(a) in the case of a seat allotted to a Governor's Province or a Chief Commissioner's Province, he is qualified to vote in a territorial constituency in the Province at an election of a member of the Council of State, or, in the case of a seat allotted to British Baluchistan, possesses such qualifications as may be prescribed ;

(b) in the case of a seat allotted to the Anglo-Indian, the European or the Indian Christian community, he possesses such qualifications as may be prescribed

12 Subject to the provisions of the four next succeeding paragraphs, the term of office of a member of the Council of State shall be 9 years

Provided that a person chosen to fill a casual vacancy shall be chosen to serve only for the remainder of his predecessor's term of office

13 Upon the first constitution of the Council of State persons shall be chosen to fill all seats allotted to Governors' Provinces, Chief Commissioners' Provinces and communities, but, for the purpose of securing that in every third year one third of the holders of such seats shall retire, one-third of the persons first chosen shall be chosen to serve for 3 years only, one-third shall be chosen to serve for 6 years only and one-third shall be chosen to serve for 9 years, and thereafter in every third year persons shall be chosen to fill for 9 years the seats then becoming vacant in consequence of the provisions of this paragraph

14 In the case of a Province specified in column 1 in division (ii) of the Table of Seats, the numbers specified as respects seats of different classes in columns 2 to 6, in columns 7 to 11 and in columns 12 to 16 respectively shall be the numbers of the seats of the different classes to be filled upon the first constitution of the Council by members chosen to serve for 3 years only, by members chosen to serve for 6 years only, and by members chosen to serve for 9 years

15 The person chosen upon the first constitution of the Council to fill the Anglo-Indian seat shall be chosen to serve for 9 years, of the seven persons then chosen to fill the European seats, three shall be chosen to serve for 3 years only, one shall be chosen to serve for 6 years only and three shall be chosen to serve for 9 years, and, of the two persons then chosen to fill the Indian Christian seats, one shall be chosen to serve for 3 years only and one shall be chosen to serve for 9 years

16 Upon the first constitution of the Council of State two of the persons to be chosen by the Governor-General shall be chosen to serve for 3 years only, two shall be chosen to serve for 6 years only and two shall be chosen to serve for 9 years

### *The Federal Assembly*

17 The allocation of seats in the Federal Assembly, other than seats allotted to Indian States, shall be as shown in the relevant Table of Seats appended to this part of this schedule

18 To each Governor's Province and Chief Commissioner's Province specified in the first column of the Table there shall be

allotted the number of seats specified in the second column opposite to that Province, and of those seats—

(i) the number specified in the third column shall be general seats, of which the number specified in the fourth column shall be reserved for members of the scheduled castes ;

(ii) the numbers specified in the next eight columns shall be the numbers of seats to be filled respectively by persons chosen to represent (a) the Sikh community ; (b) the Muhammadan community ; (c) the Anglo-Indian community ; (d) the European community ; (e) the Indian Christian community ; (f) the interests of commerce and industry ; (g) landholders ; and (h) the interests of labour ; and

(iii) the number specified in the thirteenth column shall be the number of seats reserved to women.

There shall also be in the Federal Assembly four seats not allotted to any Province, of which three shall be seats to be filled by representatives of commerce and industry and one shall be a seat to be filled by a representative of labour.

19. Subject to the provisions of the next succeeding paragraph, persons to fill the seats in the Federal Assembly allotted to a Governor's Province as general seats, Sikh seats or Muhammadan seats shall be chosen by electorates consisting of such of the members of the Legislative Assembly of the Province as hold therein general seats, Sikh seats or Muhammadan seats respectively, voting in the case of a general election in accordance with the principle of proportional representation by means of the single transferable vote :

Provided that in the North West Frontier Province the holders of Sikh seats, and in any Province in which seats are reserved for representatives of backward areas or backward tribes, the holders of those seats shall, for the purposes of this paragraph, be deemed to hold general seats.

20. The provisions of this paragraph shall have effect with respect to the general seats reserved in any Governors' Province for members of the scheduled castes :—

For the purposes of a general election of members of the Federal Assembly—

(a) there shall be a primary electorate consisting of all persons who were successful candidates at the primary elections held, in accordance with the provisions of the fifth schedule to this Act, on the occasion of the last general election of members of the Legislative Assembly of the Province for the purpose of selecting candidates for seats reserved for members of the scheduled castes ;

(b) the members of the primary electorate so constituted shall be entitled to take part in a primary election held for the purpose of electing four candidates for each seat so reserved ; and

(c) no person who is not so elected as a candidate shall be qualified to be chosen to fill such a seat

Rules made under this part of this schedule shall make provision as to the manner in which a casual vacancy occurring in a seat to which this paragraph applies is to be filled

21 For the purpose of choosing persons to fill the women's seats in the Federal Assembly there shall be for British India an electoral college consisting of such women as are members of the Legislative Assembly of any Governors' Province, and the person to fill a woman's seat allotted to any particular Province shall be chosen by the members of the college

Rules regulating the conduct of elections by the women's electoral college shall be such as to secure that, of the nine women's seats allotted to Provinces, at least two are held by Muhammadans and at least one by an Indian Christian

22 For the purpose of choosing persons to fill the Anglo-Indian, European and Indian Christian seats in the Federal Assembly, there shall be for British India three electoral colleges consisting respectively of such persons as hold an Anglo-Indian, a European or an Indian Christian seat in the Legislative Assembly of any Governors' Province, and the person to fill an Anglo-Indian, European or Indian Christian seat allotted to any particular Province shall be chosen by the members of the appropriate electoral college

In choosing at a general election the persons to fill the Indian Christian seats allotted to the Province of Madras, the Indian Christian electoral college shall vote in accordance with the principle of proportional representation by means of the single transferable vote

23 Persons to fill the seats in the Federal Assembly which are to be filled by representatives of commerce and industry, land holders and representatives of labour shall be chosen—

(a) in the case of a seat allotted to a Province which is to be filled by a representative of commerce and industry, by such chambers of commerce and similar associations voting in such manner as may be prescribed,

(b) in the case of a seat allotted to a Province which is to be filled by a landholder, by such persons voting in such territorial constituencies and in such manner as may be prescribed,

(c) in the case of a seat allotted to a Province which is to be filled by a representative of labour, by such organisations, or in such constituencies, and in accordance with such manner of voting as may be prescribed,

(d) in the case of one of the non-provincial seats which are to be filled by representatives of commerce and industry, by such Associated Chambers of Commerce, in the case of another such seat by such Federated Chambers of Commerce and in the case

of the third such seat by such commercial bodies in Northern India, voting in each case in such manner as may be prescribed ; and

(e) in the case of the non-provincial seat which is to be filled by a representative of labour, by such organisations voting in such manner as may be prescribed.

24. Persons to fill the seats in the Federal Assembly allotted to Chief Commissioners' Provinces as general seats or Muhammadan seats shall be chosen—

(a) in the case of Coorg, by the members of the Legislative Council ; and

(b) in other cases in such manner as may be prescribed.

25. A person shall not be qualified to hold a seat in the Federal Assembly, unless—

(i) in the case of a general seat, a Sikh seat, a Muhammadan seat, an Anglo-Indian seat, a European seat, an Indian Christian seat or a women's seat allotted to a Governor's Province or the Province of Coorg, he is qualified to hold a seat of the same class in the Legislative Assembly, or, in the case of Coorg, the Legislative Council, of that Province ;

(ii) in the case of any other seat, he possesses such qualifications as may be prescribed.

#### General

\* \* \*

TABLE OF SEATS—*The Council of State*  
*Representatives of British India*

#### (i) Allocation of Seats

1. Province or Community.	2. Total Seats.	3. General Seats.	4. Seats for Scheduled Castes.	5. Sikh Seats.	6. Muham- madan Seats.	7. Women's Seats.
Madras .. ..	20	14	1	—	4	1
Bombay .. ..	16	10	1	—	4	1
Bengal .. ..	20	8	1	—	10	1
United Provinces ..	20	11	1	—	7	1
Punjab .. ..	16	3	—	4	8	1
Bihar .. ..	16	10	1	—	4	1
Central Provinces and Berar.	8	6	1	—	1	—
Assam .. ..	5	3	—	—	2	—
North West Frontier Province.	5	1	—	—	4	—
Orissa .. ..	5	4	—	—	1	—
Sind .. ..	5	2	—	—	3	—
British Baluchistan ..	1	—	—	—	1	—
Delhi .. ..	1	1	—	—	—	—
Ajmer-Merwara .. ..	1	1	—	—	—	—
Coorg .. ..	1	1	—	—	—	—
Anglo-Indians .. ..	1	—	—	—	—	—
Europeans .. ..	7	—	—	—	—	—
Indian Christians ..	2	—	—	—	—	—
<b>Total</b>	<b>150</b>	<b>75</b>	<b>6</b>	<b>4</b>	<b>49</b>	<b>6</b>

(ii) *Distribution of Seats for Purposes of Triennial Elections*

1 Province	Number of Seats to be filled originally for 3 Years only					Number of Seats to be filled originally for 6 Years only					Number of Seats to be filled originally for 9 Years				
	2 General Seats	3 Seats for Scheduled Castes	4 Sikh Seats	5 Muham- madan Seats	6 Women s Seats	7 General Seats	8 Seats for Scheduled Castes	9 Sikh Seats	10 Muham- madan Seats	11 Women s Seats	12 General Seats	13 Seats for Scheduled Castes	14 Sikh Seats	15 Muham- madan Seats	16 Women s Seats s
Madras	—	—	—	—	—	7	—	—	2	1	7	1	—	2	—
Bombay	5	—	—	2	1	—	—	—	—	—	5	1	—	2	—
Bengal	4	1	—	5	—	—	—	—	—	—	4	—	—	5	1
United Provinces	5	1	—	3	1	6	—	—	4	—	—	—	—	—	—
Punjab	2	—	2	4	—	1	—	2	4	1	—	—	—	—	—
Bihar	—	—	—	—	—	5	1	—	2	—	5	—	—	2	1
Central Provinces and Berar	—	—	—	—	—	6	1	—	1	—	—	—	—	—	—
Assam	—	—	—	—	—	3	—	—	2	—	—	—	—	—	—
North West Frontier Province	—	—	—	—	—	—	—	—	—	—	1	—	—	4	—
Orissa	4	—	—	1	—	—	—	—	—	—	—	—	—	—	—
Sind	2	—	—	3	—	—	—	—	—	—	—	—	—	1	—
British Baluchistan	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
Delhi	—	—	—	—	—	—	—	—	—	—	1	—	—	—	—
Ajmer Merwara	—	—	—	—	—	—	—	—	—	—	1	—	—	—	—
Coorg	—	—	—	—	—	—	—	—	—	—	1	—	—	—	—
Totals	22	2	2	18	2	28	2	2	15	2	25	2	—	16	2

TABLE OF SEATS—*The Federal Assembly*  
*Representatives of British India*

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.
Province.	Total Seats.	General Seats.		Sikh Seats.	Muham- madan Seats.	Anglo- Indian Seats.	Euro- pean Seats.	Indian Christian Seats.	Seats for Repre- sentatives of Com- merce and Industry.	Land- holders' Seats.	Seats for Repre- sentatives of Labour.	Women's Seats.
		Total of General Seats.	General Seats reserved for Scheduled Castes.									
Madras .. .. .	37	19	4	—	8	1	1	2	2	1	1	2
Bombay .. .. .	30	13	2	—	6	1	1	1	3	1	2	2
Bengal .. .. .	37	10	3	—	17	1	1	1	3	1	2	1
United Provinces ..	37	19	3	—	12	1	1	1	—	1	1	1
Punjab .. .. .	30	6	1	6	14	—	1	1	—	1	—	1
Bihar .. .. .	30	16	2	—	9	—	1	1	—	1	1	1
Central Provinces and Berar.	15	9	2	—	3	—	—	—	—	1	1	1
Assam .. .. .	10	4	1	—	3	—	1	1	—	—	1	—
North West Frontier Province.	5	1	—	—	4	—	—	—	—	—	—	—
Orissa .. .. .	5	4	1	—	1	—	—	—	—	—	—	—
Sind .. .. .	5	1	—	—	3	—	1	—	—	—	—	—
British Baluchistan ..	1	—	—	—	1	—	—	—	—	—	—	—
Delhi .. .. .	2	1	—	—	1	—	—	—	—	—	—	—
Ajmer-Merwara .. .	1	1	—	—	—	—	—	—	—	—	—	—
Coorg .. .. .	1	1	—	—	—	—	—	—	—	—	—	—
Non-Provincial Seats ..	4	—	—	—	—	—	—	—	3	—	1	—
Totals .. .. .	250	105	19	6	82	4	8	8	11	7	10	9



## PART II—REPRESENTATIVES OF INDIAN STATES

1 The allocation to Indian States of seats in the Federal Legislature shall be as shown in the Table appended to this part of this schedule, hereinafter referred to as "the Table of Seats" and persons to represent Indian States in that Legislature shall be chosen and appointed in accordance with the provisions hereinafter contained

2 In the case of the Council of State, there shall be allotted to each State or, as the case may be, to each group of States specified in the first column of the Table of Seats the number of seats specified in the second column of the said Table opposite to that State or to that group of States

3 In the case of the Federal Assembly, there shall be allotted to each State or, as the case may be, to each group of States specified in the third column of the Table of Seats, the number of seats specified in the fourth column of the said Table opposite to that State or to that group of States

4 A person shall not be qualified to be appointed under this part of this schedule to fill a seat in either Chamber of the Federal Legislature unless he—

(i) is a British subject or the Ruler or a subject of an Indian State which has acceded to the Federation, and

(ii) is in the case of a seat in the Council of State not less than 30 years of age and, in the case of a seat in the Federal Assembly not less than 25 years of age

Provided that—

(a) the Governor General may in his discretion declare as respects any State the Ruler of which at the date of the establishment of the Federation was by reason of his minority not exercising ruling powers that sub paragraph (i) of this paragraph shall not apply to any named subject or to subjects generally, of that State until that State comes under the rule of a Ruler who is of an age to exercise ruling powers and

(b) sub paragraph (ii) of this paragraph shall not apply to a Ruler who is exercising ruling powers

5 Upon the expiration of the term for which he is appointed to serve as a member of the Federal Legislature a person, if otherwise duly qualified, shall be eligible to be appointed to serve for a further term

6 Subject to the special provisions hereinafter contained with respect to the appointment of persons to represent certain States and groups of States comprised in divisions XVI and XVII of the Table of Seats—

(i) the Rulers of States constituting a group of States to

which a seat in the Council of State is allotted shall in rotation appoint a person to fill that seat ; and

(ii) the Rulers of the States constituting a group of States to which a seat in the Federal Assembly is allotted shall appoint jointly a person to fill that seat :

Provided that the Rulers of two or more States entitled to appoint in rotation a person to fill a seat in the Council of State allotted to a group of States may by agreement, and with the approval of the Governor-General in his discretion, appoint jointly a person to fill that seat.

7. The period for which a person shall be appointed to fill a seat shall be—

(i) in the case of a person appointed to fill a seat in the Council of State—

(a) by the Ruler of a State entitled to separate representation, 9 years ;

(b) jointly by the Rulers of all the States in a group which have acceded to the Federation, 3 years ;

(c) by the Ruler of a State appointing in rotation, one year subject, however, to the special provisions of the next succeeding paragraph with respect to certain States therein mentioned ;

(d) jointly by Rulers of some only of the States in a group which have acceded to the Federation, a period equal to the aggregate of the periods for which each of them might in rotation have appointed a person to hold that seat or 3 years, whichever may be the shorter period ;

(e) in any other manner, 3 years ; and

(ii) in the case of a person appointed to fill a seat in the Federal Assembly, until the dissolution of the Assembly :

Provided that—

(i) a person appointed to fill a seat upon the occurrence of a casual vacancy shall be appointed to fill that seat for the remainder of the period for which his predecessor was appointed ;

(ii) in the case of first appointments to fill seats in the Council of State the Governor-General in his discretion shall make by order provision for securing that approximately one-third of the persons appointed by Rulers entitled to separate representation shall be appointed to fill seats for 3 years only, approximately one-third to fill seats for 6 years only and approximately one-third to fill seats for 9 years.

8. The Ruler of a State mentioned in this paragraph when appointing in rotation a person to fill a seat in the Council of State shall, notwithstanding anything in the preceding paragraph, be entitled to appoint that person to fill the seat—

(a) in the case of the Rulers of Panna and of Mayurbhanj for 2 years and

(b) in the case of the Ruler of Pudukkottai for 3 years

9 Subject as hereinafter provided the Rulers of two or more States forming a group to which one seat in either Chamber of the Federal Legislature is allotted shall in choosing a person to be appointed by them jointly to fill that seat each have one vote and in the case of an equality of votes the choice shall be determined by lot or otherwise in such other manner as may be prescribed

Provided that in choosing a person to be so appointed the Ruler of a State mentioned in sub paragraph (a) of the preceding paragraph shall be entitled to two votes and the Ruler of the State mentioned in sub paragraph (b) of that paragraph shall be entitled to three votes

10 A seat in either Chamber allotted to a single State shall remain unfilled until the Ruler of that State has acceded to the Federation and a seat in either Chamber which is the only seat therein allotted to a group of States shall remain unfilled until the Rulers of at least one half of those States have so acceded but subject as hereinafter provided so long as one tenth of the seats in either Chamber allotted either to single States or to groups of States remain unfilled by reason of the non accession of a State or States whether such non accession be due to the minority of a Ruler or to any other cause the persons appointed by the Rulers of States to fill seats in that Chamber may from time to time in the prescribed manner appoint persons not exceeding one half of the number of seats so unfilled to be additional members of that Chamber

Provided that the right to appoint such additional members shall not be exercised after the expiration of 20 years from the establishment of the Federation

A person appointed under this paragraph as an additional member of either Chamber shall be appointed to fill his seat for a period of one year only

11 Persons to fill the seats in the Federal Assembly allotted to any group of States mentioned in division XVI of the Table of Seats as entitled to appoint persons to fill three such seats shall be appointed in the prescribed manner by the Rulers of such of the States in the group as have acceded to the Federation

Provided that—

(a) until the Rulers of two of those States have so acceded all the three seats shall remain unfilled and

(b) until the Rulers of four of those States have so acceded two of the three seats shall remain unfilled and

(c) until the Rulers of six of those States have so acceded one of the three seats shall remain unfilled

Seats in the Federal Assembly remaining unfilled by reason of the provisions of this paragraph shall be treated as seats remaining unfilled for the purposes of the last preceding paragraph.

12. The provisions of this paragraph shall apply with respect to the two seats in the Council of State and the five seats in the Federal Assembly allotted to the States comprised in division XVII of the Table of Seats :—

(a) the States in question are such States, being States which on the 1st day of January, 1935, were included in the Western India States Agency, the Gujarat States Agency, the Deccan States Agency, the Eastern States Agency, the Central India Agency or the Rajputana Agency, or were in political relations with the Government of the Punjab or the Government of Assam, as may be enumerated in rules made by the Governor-General in his discretion ;

(b) the Governor-General shall, in the rules so made by him, divide the said States into five groups, and of the five seats in the Federal Assembly allotted to those States one shall be deemed to be allotted to each of the groups ;

(c) a seat in the Federal Assembly allotted to one of the said groups shall remain unfilled until the Rulers of at least one-half of the States in the group have acceded to the Federation, but, save as aforesaid, a person to fill such a seat shall be appointed in the prescribed manner by the Rulers of such of the States in the group as have acceded to the Federation ;

(d) persons to fill the two seats in the Council of State allotted to the States comprised in the said division shall be appointed in the prescribed manner by the persons appointed under the preceding sub-paragraph to fill seats in the Federal Assembly :

Provided that, so long as three of the five seats in the Federal Assembly remain unfilled, one of the two seats in the Council of State shall also remain unfilled ;

(e) seats in the Federal Assembly or Council of State remaining unfilled by reason of the provisions of this paragraph shall be treated as seats remaining unfilled for the purposes of the last but one preceding paragraph.

13. His Majesty in Council may by Order vary the Table of Seats by transferring any State from one group of States specified in column 1 or column 3 of that Table to another group of States specified in the same column, if he deems it expedient so to do—

(a) with a view to reducing the number of seats which by reason of the non-accession of a State or States would otherwise remain unfilled ; or

(b) with a view to associating in separate groups States whose Rulers do, and States whose Rulers do not, desire to make appointments jointly instead of in rotation,

and is satisfied that such variation will not adversely affect the rights and interest of any State

Provided that a State mentioned in paragraph 8 of this part of this schedule shall not be transferred to another group unless the Ruler of the State has agreed to relinquish the privileges enjoyed by him under the said paragraph and under paragraph 9

Where an Order varying the Table of Seats is made under this paragraph references (whether express or implied) in the foregoing provisions of this part of this schedule to the Table shall be construed as references to the Table as so varied

14 In so far as provision in that behalf is not made by His Majesty in Council, the Governor General may in his discretion make rules for carrying into effect the provisions of this part of this schedule and in particular but without prejudice to the generality of the foregoing words, with respect to—

(a) the times at which and the manner in which appointments are to be made the order in which Rulers entitled to make appointments in rotation are to make them and the date from which appointments are to take effect ,

(b) the filling of casual vacancies in seats ,

(c) the decision of doubts or disputes arising out of or in connection with any appointment , and

(d) the manner in which the rules are to be carried into effect

In this part of this schedule the expression 'prescribed' means prescribed by His Majesty in Council or by rules made under this paragraph

\* \* \*

#### TABLE OF SEATS—*The Council of State and the Federal Assembly Representatives of Indian States*

\* \* \*

#### *Second Schedule—Provisions of this Act which may be amended without affecting the Accession of a State*

\* \* \*

#### *Third Schedule—Provisions as to Governor-General and Governors of Provinces*

\* \* \*

#### *Fourth Schedule—Forms of Oaths or Affirmations*

\* \* \*

*Fifth Schedule.—Composition of Provincial Legislatures*

## GENERAL QUALIFICATION FOR MEMBERSHIP

1. A person shall not be qualified to be chosen to fill a seat in a Provincial Legislature unless he—

(a) is a British subject or the Ruler or a subject of an Indian State which has acceded to the Federation or, if it is so prescribed with respect to any Province, the Ruler or a subject of any prescribed Indian State; and

(b) is, in the case of a seat in a Legislative Assembly, not less than 25 years of age, and in the case of a seat in a Legislative Council, not less than 30 years of age; and

(c) possesses such, if any, of the other qualifications specified in, or prescribed under, this schedule as may be appropriate in his case.

2. Upon the expiration of the term for which he is chosen to serve as a member of a Provincial Legislature, a person, if otherwise duly qualified, shall be eligible to be chosen to serve for a further term.

## LEGISLATIVE ASSEMBLIES

3. The allocation of seats in Provincial Legislative Assemblies shall be as shown in the relevant Table of Seats appended to this schedule.

4. In the Legislative Assembly of each Province specified in the first column of the Table of Seats there shall be the number of seats specified in the second column opposite to that Province, and of those seats—

(i) the number specified in the third column shall be general seats, of which the number specified in the fourth column shall be reserved for members of the scheduled castes and, in the case of Bombay, seven shall be reserved for Marathas;

(ii) the numbers specified in the next ten columns shall be the numbers of seats to be filled by persons chosen to represent respectively—(a) backward areas and backward tribes; (b) the Sikh community; (c) the Muhammadan community; (d) the Anglo-Indian community; (e) the European community; (f) the Indian Christian community; (g) the interests of commerce, industry, mining and planting; (h) landholders; (i) universities; and (j) the interests of labour; and

(iii) the numbers specified in the last five columns shall be the numbers of seats (being either general seats, Sikh seats, Muhammadan seats, Anglo-Indian seats or Indian Christian seats) reserved for women.

In the Punjab one of the landholders' seats shall be a seat to be filled by a Tumandar.

5 A Province, exclusive of any portion thereof which His Majesty in Council may deem unsuitable for inclusion in any constituency or in any constituency of any particular class, shall be divided into territorial constituencies—

- (i) for the election of persons to fill the general seats ,
  - (ii) for the election of persons to fill the Sikh seats, if any ,
  - (iii) for the election of persons to fill the Muhammadan seats ,
  - (iv) for the election of persons to fill the Anglo Indian seats if any ,
  - (v) for the election of persons to fill the European seats, if any , and
  - (vi) except in the case of Bihar, for the election of persons to fill the Indian Christian seats, if any,
- or, if as respects any class of constituency it is so prescribed, may form one territorial constituency

In the case of each such class of constituency as aforesaid the total number of seats available shall be distributed between the constituencies by the assignment of one or more of those seats to each constituency

6 The required number of general seats to be reserved for members of the scheduled castes, and in the Province of Bombay for Marathas shall be reserved by reserving for members of those castes or, as the case may be, for Marathas one or more seats in each of so many of the general territorial constituencies as may be necessary so however, that in each such constituency there shall be at least one unreserved seat

7 In a Province in which any general seats are reserved for members of the scheduled castes, all members of those castes who are entitled to vote in a constituency in which any seat is so reserved shall be entitled to take part in a primary election held for the purpose of electing four candidates for each seat so reserved and no member of those castes not elected as a candidate at such an election shall be qualified to hold—

- (a) a seat so reserved in that constituency ,
- (b) if it is so prescribed as respects that Province, any seat in that constituency

In relation to by-elections this paragraph shall have effect with such adaptations and modifications as may be prescribed

8 The persons to fill the seats specified in columns 15 to 19 of the Table of Seats as seats to be filled by women shall be chosen in territorial constituencies, which shall be either—

- (a) constituencies formed under paragraph 5 of this schedule ,
- or
- (b) constituencies specially formed for the purpose of electing women members

9. The provisions of the sixth schedule to this Act shall have effect with respect to the persons who are entitled to vote at elections in the territorial constituencies mentioned in paragraphs 5 and 8 of this schedule.

10. In a Province in which any seats are to be filled by representatives of backward areas or backward tribes, representatives of commerce, industry, mining and planting, representatives of landholders, representatives of universities or representatives of labour, persons to fill those seats, and in Bihar the person to fill the Indian Christian seat, shall be chosen in such manner as may be prescribed :

Provided that in a Province in which any seats are to be filled by representatives of backward areas or backward tribes some or all of those seats may, if it is so prescribed, be treated in the prescribed manner as additional general seats to be reserved for representatives of such areas or tribes.

11. In the Punjab the landholder's seat to be filled by a Tumandar shall be assigned to such constituency as may be prescribed.

12. A person shall not be qualified to hold a seat in the Legislative Assembly of a Province unless—

(a) in the case of a seat to be filled by a woman, by a European, by an Indian Christian, by a representative of backward areas or backward tribes, by a representative of commerce, industry, mining and planting, by a representative of universities or by a representative of labour, he possesses such qualifications as may be prescribed ; and

(b) in the case of any other seat, he is entitled to vote in the choice of a member to fill that seat or any other seat of a similar class in that Province.

#### LEGISLATIVE COUNCILS

13. The allocation of seats in the Legislative Councils of Provinces having such Councils shall be as shown in the relevant Table of Seats appended to this schedule.

14. In the Legislative Council of each Province specified in the first column of the Table of Seats there shall be the number of seats specified in the second column opposite to that Province, and of those seats—

(a) the number specified in the third column shall be general seats ;

(b) the number specified in the fourth, fifth and sixth columns shall be seats to be filled by persons chosen to represent respectively the Muhammadan community, the European community and the Indian Christian community ;

(c) the number specified in the seventh column shall be seats to be filled by persons elected by the members of the Legislative



Assembly of the Province in accordance with the system of proportional representation by means of the single transferable vote, and

(d) the number specified in the eighth column shall be seats to be filled by persons chosen by the Governor in his discretion

15 A Province exclusive of any portion thereof which His Majesty in Council may deem unsuitable for inclusion in any constituency or in any constituency of any particular class, shall be divided into territorial constituencies—

(i) for the purpose of electing persons to fill the general seats

(ii) for the purpose of electing persons to fill the Muhammadan seats,

(iii) for the purpose of electing persons to fill the European seats,

(iv) for the purpose of electing persons to fill the Indian Christian seats if any,

or, if as respects any class of constituency it is so prescribed, may form one territorial constituency

In the case of each such class of constituency as aforesaid the total number of seats available shall be distributed between the constituencies by the assignment of one or more of those seats to each constituency

16 At an election in a constituency to fill a general seat, persons entitled to vote in a Muhammadan constituency, a European constituency, or an Indian Christian constituency shall not be entitled to vote

In the case of a Muhammadan constituency, a European constituency, or an Indian Christian constituency no person shall be entitled to vote who is not, as the case may be, a Muhammadan, a European, or an Indian Christian

17 The qualifications entitling a person to vote in territorial constituencies at elections of members of a Provincial Legislative Council and the qualifications to be possessed by members of such Councils shall be such as may be prescribed

18 The term of office of a member of the Legislative Council of a Province, other than a member chosen to fill a casual vacancy, shall be 9 years, but upon the first constitution of the Council the Governor in his discretion shall make by order such provision as he thinks fit by curtailing the term of office of some of the members then chosen for securing that, as nearly as may be, one-third of the members holding seats of each class shall retire in every third year thereafter

A member chosen to fill a casual vacancy shall be chosen to serve for the remainder of his predecessor's term of office

#### GENERAL

TABLE OF SEATS—*Provincial Legislative Assemblies*

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.	18.	19.
Province.	Total Seats.	General Seats.		Seats for Representatives of Backward Areas and Tribes.	Sikh Seats.	Muham-madan Seats.	Anglo-Indian Seats.	Euro-pean Seats.	Indian Christian Seats.	Seats for Representatives of Commerce, Industry, Mining and Planting.	Land-holders' Seats.	Uni-versity Seats.	Seats for Representatives of Labour.	Seats for Women.				
		Total of General Seats.	General Seats reserved for Scheduled Castes.											Gene-ral.	Sikh.	Muham-madan.	Anglo-Indian.	Indian Chris-tian.
Madras ..	215	146	30	1	--	28	2	3	8	6	6	1	6	6	—	1	—	1
Bombay ..	175	114	15	1	—	29	2	3	3	7	2	1	7	5	—	1	—	—
Bengal ..	250	78	30	—	—	117	3	11	2	19	5	2	8	2	—	2	1	—
United Provinces.	228	140	20	—	—	64	1	2	2	3	6	1	3	4	—	2	—	—
Punjab ..	175	42	8	—	31	84	1	1	2	1	5	1	3	1	1	2	—	—
Bihar ..	152	86	15	7	—	39	1	2	1	4	4	1	3	3	—	1	—	—
Central Provinces and Berar.	112	84	20	1	—	14	1	1	—	2	3	1	2	3	—	—	—	—
Assam ..	108	47	7	9	—	34	—	1	1	11	—	—	4	1	—	—	—	—
North Western Frontier Province.	50	9	—	—	3	36	—	—	—	—	2	—	—	—	—	—	—	—
Orissa ..	60	44	6	5	—	4	—	—	1	1	2	—	1	2	—	—	—	—
Sind ..	60	18	—	—	—	33	—	2	—	2	2	—	1	1	—	1	—	—

In Bombay seven of the general seats shall be reserved for Marathas.

In the Punjab one of the landholders' seats shall be a seat to be filled by a Tumandra.

In Assam and Orissa the seats reserved for women shall be non-communal seats.

TABLE OF SEATS—*Provincial Legislative Councils*

1	2	3	4	5	6	7	8
Province	Total of Seats	General Seats	Muhammadan Seats	European Seats	Indian Christian Seats	Seats to be filled by Legislative Assembly	Seats to be filled by Governor
Madras	{ Not less than 54 Not more than 56 }	35	7	1	3	—	{ Not less than 8 Not more than 10 }
Bombay	{ Not less than 29 Not more than 30 }	20	5	1	—	—	{ Not less than 3 Not more than 4 }
Bengal	{ Not less than 63 Not more than 65 }	10	17	3	—	77	{ Not less than 6 Not more than 8 }
United Provinces	{ Not less than 58 Not more than 60 }	34	17	1	—	—	{ Not less than 6 Not more than 8 }
Bihar	{ Not less than 29 Not more than 30 }	9	4	1	—	12	{ Not less than 3 Not more than 4 }
Assam	{ Not less than 21 Not more than 22 }	10	6	2	—	—	{ Not less than 3 Not more than 4 }

*Sixth Schedule.—Provisions as to Franchise*

## PART I.—GENERAL

\* \* \*

3. No person shall be included in the electoral roll for any territorial constituency unless he has attained the age of 21 years and is either—

(a) a British subject ; or

(b) the Ruler or a subject of a Federated State ; or

(c) if and so far as it is so prescribed with respect to any Province, and subject to any prescribed conditions, the Ruler or a subject of any other Indian State.

## PART II.—MADRAS

\* \* \*

## PART III.—BOMBAY

\* \* \*

## PART IV.—BENGAL

\* \* \*

## PART V.—THE UNITED PROVINCES

\* \* \*

## PART VI.—THE PUNJAB

\* \* \*

## PART VII.—BIHAR

\* \* \*

## PART VIII.—THE CENTRAL PROVINCES AND BERAR

\* \* \*

## PART IX.—ASSAM

\* \* \*

## PART X.—THE NORTH WEST FRONTIER PROVINCE

\* \* \*

## PART XI.—ORISSA

\* \* \*

## PART XII.—SIND

\* \* \*

*Seventh Schedule.—Legislative Lists*

## LIST I.—FEDERAL LEGISLATIVE LIST

1. His Majesty's naval, military and air forces borne on the Indian establishment and any other armed force raised in India by

the Crown not being forces raised for employment in Indian States or military or armed police maintained by Provincial Governments, any armed forces which are not forces of His Majesty, but are attached to or operating with any of His Majesty's naval, military or air forces borne on the Indian establishment, central intelligence bureau, preventive detention in British India for reasons of State connected with defence, external affairs, or the discharge of the functions of the Crown in its relations with Indian States

2 Naval military and air force works, local self government in cantonment areas (not being cantonment areas of Indian State troops), the regulation of house accommodation in such areas, and within British India, the delimitation of such areas

3 External affairs the implementing of treaties and agreements with other countries extradition, including the surrender of criminals and accused persons to parts of His Majesty's dominions outside India

4 Ecclesiastical affairs, including European cemeteries

5 Currency, coinage and legal tender

6 Public debt of the Federation

7 Posts and telegraphs including telephones wireless broadcasting and other like forms of communication, Post Office Savings Bank

8 Federal public services and Federal Public Service Commission

9 Federal pensions that is to say, pensions payable by the Federation or out of Federal revenues

10 Works, lands and buildings vested in, or in the possession of His Majesty for the purposes of the Federation (not being naval military or air force works), but, as regards property situate in a Province subject always to provincial legislation, save in so far as Federal law otherwise provides and as regards property in a Federated State held by virtue of any lease or agreement with that State, subject to the terms of that lease or agreement

11 The Imperial Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial, and any similar institution controlled or financed by the Federation

12 Federal agencies and institutes for the following purposes, that is to say, for research for professional or technical training, or for the promotion of special studies

13 The Benares Hindu University and the Aligarh Muslim University

14 The survey of India, the geological, botanical and zoological surveys of India, Federal meteorological organisations

15. Ancient and historical monuments ; archæological sites and remains.
16. Census.
17. Admission into, and emigration and expulsion from, India, including in relation thereto the regulation of the movements in India of persons who are not British subjects domiciled in India, subjects of any Federated State, or British subjects domiciled in the United Kingdom ; pilgrimages to places beyond India.
18. Port quarantine ; seamen's and marine hospitals, and hospitals connected with port quarantine.
19. Import and export across customs frontiers as defined by the Federal Government.
20. Federal railways ; the regulation of all railways other than minor railways in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers ; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers.
21. Maritime shipping and navigation, including shipping and navigation on tidal waters ; Admiralty jurisdiction.
22. Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of port authorities therein.
23. Fishing and fisheries beyond territorial waters.
24. Aircraft and air navigation ; the provision of aerodromes ; regulation and organisation of air traffic and of aerodromes.
25. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.
26. Carriage of passengers and goods by sea or by air.
27. Copyright, inventions, designs, trade marks and merchandise marks.
28. Cheques, bills of exchange, promissory notes and other like instruments.
29. Arms ; firearms ; ammunition.
30. Explosives.
31. Opium, so far as regards cultivation and manufacture, or sale for export.
32. Petroleum and other liquids and substances declared by Federal

law to be dangerously inflammable, so far as regards possession storage and transport

33 Corporations that is to say, the incorporation, regulation and winding up of trading corporations, including banking insurance and financial corporations, but not including corporations owned or controlled by a Federated State and carrying on business only within that State or co-operative societies, and of corporations whether trading or not with objects not confined to one unit

34 Development of industries, where development under Federal control is declared by Federal law to be expedient in the public interest

35 Regulation of labour and safety in mines and oilfields

36 Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under Federal control is declared by Federal law to be expedient in the public interest

37 The law of insurance, except as respects insurance undertaken by a Federated State, and the regulation of the conduct of insurance business except as respects business undertaken by a Federated State Government insurance except so far as undertaken by a Federated State, or by virtue of any entry in the Provincial Legislative List or the Concurrent Legislative List, by a Province

38 Banking that is to say, the conduct of banking business by corporations other than corporations owned or controlled by a Federated State and carrying on business only within that State

39 Extension of the powers and jurisdiction of members of a police force belonging to any part of British India to any area in another Governor's Province or Chief Commissioner's Province but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the Government of the Province or the Chief Commissioner, as the case may be, extension of the powers and jurisdiction of members of a police force belonging to any unit to railway areas outside that unit

40 Elections to the Federal Legislature, subject to the provisions of this Act and of any Order in Council made thereunder

41 The salaries of the Federal Ministers, of the President and Vice President of the Council of State and of the Speaker and Deputy Speaker of the Federal Assembly, the salaries, allowances and privileges of the members of the Federal Legislature, and, to such extent as is expressly authorised by part II of this Act, the punishment of persons who refuse to give evidence or produce documents before committees of the Legislature

42. Offences against laws with respect to any of the matters in this List.
43. Inquiries and statistics for the purposes of any of the matters in this List.
44. Duties of customs, including export duties.
45. Duties of excise on tobacco and other goods manufactured or produced in India except—
  - (a) alcoholic liquors for human consumption ;
  - (b) opium, Indian hemp and other narcotic drugs and narcotics ; non-narcotic drugs ;
  - (c) medicinal and toilet preparations containing alcohol, or any substance included in sub-paragraph (b) of this entry.
46. Corporation tax.
47. Salt.
48. State lotteries.
49. Naturalisation.
50. Migration within India from or into a Governor's Province or a Chief Commissioner's Province.
51. Establishment of standards of weight.
52. Ranchi European Mental Hospital.
53. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this List and, to such extent as is expressly authorised by part IX of this Act, the enlargement of the appellate jurisdiction of the Federal Court, and the conferring thereon of supplemental powers.
54. Taxes on income other than agricultural income.
55. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies ; taxes on the capital of companies.
56. Duties in respect of succession to property other than agricultural land.
57. The rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, proxies and receipts.
58. Terminal taxes on goods or passengers carried by railway or air ; taxes on railway fares and freights.
59. Fees in respect of any of the matters in this List, but not including fees taken in any court.



## LIST II—PROVINCIAL LEGISLATIVE LIST

- 1 Public order (but not including the use of His Majesty's naval military or air forces in aid of the civil power), the administration of justice, constitution and organisation of all courts, except the Federal Court, and fees taken therein, preventive detention for reasons connected with the maintenance of public order, persons subjected to such detention
- 2 Jurisdiction and powers of all courts except the Federal Court with respect to any of the matters in this List; procedure in rent and revenue courts
- 3 Police, including railway and village police
- 4 Prisons, reformatories Borstal institutions and other institutions of a like nature, and persons detained therein, arrangements with other units for the use of prisons and other institutions
- 5 Public debt of the Province
- 6 Provincial public services and Provincial Public Service Commissions
- 7 Provincial pensions, that is to say, pensions payable by the Province or out of provincial revenues
- 8 Works lands and buildings vested in or in the possession of His Majesty for the purposes of the Province
- 9 *Compulsory acquisition of land*
- 10 Libraries, museums and other similar institutions controlled or financed by the Province
- 11 Elections to the Provincial Legislature, subject to the provisions of this Act and of any Order in Council made thereunder
- 12 The salaries of the Provincial Ministers, of the Speaker and Deputy Speaker of the Legislative Assembly, and, if there is a Legislative Council, of the President and Deputy President thereof the salaries, allowances and privileges of the members of the Provincial Legislature, and, to such extent as is expressly authorised by part III of this Act, the punishment of persons who refuse to give evidence or produce documents before committees of the Provincial Legislature
- 13 Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards mining settlement authorities and other local authorities for the purpose of local self-government or village administration
- 14 Public health and sanitation, hospitals and dispensaries, registration of births and deaths

15. Pilgrimages, other than pilgrimages to places beyond India.
16. Burials and burial grounds.
17. Education.
18. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; minor railways subject to the provisions of List I with respect to such railways; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List III with regard to such waterways; ports, subject to the provisions in List I with regard to major ports; vehicles other than mechanically propelled vehicles.
19. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power.
20. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases; improvement of stock and prevention of animal diseases; veterinary training and practice; pounds and the prevention of cattle trespass.
21. Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents; transfer, alienation and devolution of agricultural land; land improvement and agricultural loans; colonisation; courts of wards; encumbered and attached estates; treasure trove.
22. Forests.
23. Regulation of mines and oilfields and mineral development subject to the provisions of List I with respect to regulation and development under Federal control.
24. Fisheries.
25. Protection of wild birds and wild animals.
26. Gas and gasworks.
27. Trade and commerce within the Province; markets and fairs; money lending and money lenders.
28. Inns and innkeepers.
29. Production, supply and distribution of goods; development of industries, subject to the provisions in List I with respect to the development of certain industries under Federal control.
30. Adulteration of food stuffs and other goods; weights and measures.
31. Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, but subject,

as respects opium, to the provisions of List I and, as respects poisons and dangerous drugs, to the provisions of List III

32 Relief of the poor , unemployment

33 The incorporation, regulation, and winding-up of corporations other than corporations specified in List I ; unincorporated trading literary, scientific, religious and other societies and associations, co-operative societies

34 Charities and charitable institutions , charitable and religious endowments

35 Theatres, dramatic performances and cinemas, but not including the sanction of cinematograph films for exhibition

36 Betting and gambling

37. Offences against laws with respect of any of the matters in this List

38 Inquiries and statistics for the purpose of any of the matters in this List

39 Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenue

40 Duties of excise on the following goods manufactured or produced in the Province and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India—

(a) alcoholic liquors for human consumption ,

(b) opium, Indian hemp and other narcotic drugs and narcotics , non narcotic drugs ,

(c) medicinal and toilet preparations containing alcohol or any substance included in sub paragraph (b) of this entry

41 Taxes on agricultural income

42 Taxes on lands and buildings, hearths and windows

43 Duties in respect of succession to agricultural land

44 Taxes on mineral rights, subject to any limitations imposed by any Act of the Federal Legislature relating to mineral development

45 Capitation taxes

46 Taxes on professions, trades, callings and employments

47 Taxes on animals and boats

48 Taxes on the sale of goods and on advertisements

49. Cesses on the entry of goods into a local area for consumption, use or sale therein.
50. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.
51. The rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.
52. Dues on passengers and goods carried on inland waterways.
53. Tolls.
54. Fees in respect of any of the matters in this List, but not including fees taken in any court.

LIST III.—CONCURRENT LEGISLATIVE LIST

*Part I*

1. Criminal law, including all matters included in the Indian Penal Code at the date of the passing of this Act, but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of His Majesty's naval, military and air forces in aid of the civil power.
2. Criminal procedure, including all matters included in the Code of Criminal Procedure at the date of the passing of this Act.
3. Removal of prisoners and accused persons from one unit to another unit.
4. Civil procedure, including the law of limitation and all matters included in the Code of Civil Procedure at the date of the passing of this Act ; the recovery in a Governor's Province or a Chief Commissioner's Province of claims in respect of taxes and other public demands, including arrears of land revenue and sums recoverable as such, arising outside that Province.
5. Evidence and oaths ; recognition of laws, public acts and records and judicial proceedings.
6. Marriage and divorce ; infants and minors ; adoption.
7. Wills, intestacy, and succession, save as regards agricultural land.
8. Transfer of property other than agricultural land ; registration of deeds and documents.
9. Trusts and trustees.
10. Contracts, including partnership, agency, contracts of carriage, and other special forms of contract, but not including contracts relating to agricultural land.

- 11 Arbitration
- 12 Bankruptcy and insolvency, administrators general and official trustees
- 13 Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty
- 14 Actionable wrongs, save in so far as included in laws with respect to any of the matters specified in List I or List II
- 15 Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this List
- 16 Legal, medical and other professions
- 17 Newspapers, books and printing presses
- 18 Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficient
- 19 Poisons and dangerous drugs
- 20 Mechanically propelled vehicles
- 21 Boilers
- 22 Prevention of cruelty to animals
- 23 European vagrancy, criminal tribes
- 24 Inquiries and statistics for the purpose of any of the matters in this part of this List
- 25 Fees in respect of any of the matters in this part of this List, but not including fees taken in any court

### *Part II*

- 26 Factories
- 27 Welfare of labour, conditions of labour, provident funds employers' liability and workmen's compensation; health insurance including invalidity pensions, old age pensions
- 28 Unemployment insurance
- 29 Trade unions, industrial and labour disputes
- 30 The prevention of the extension from one unit to another of infectious or contagious diseases or pests affecting men, animals or plants
- 31 Electricity
- 32 Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways, carriage of passengers and goods on inland waterways

33. The sanctioning of cinematograph films for exhibition.
34. Persons subjected to preventive detention under Federal authority.
35. Inquiries and statistics for the purpose of any of the matters in this part of this List.
36. Fees in respect of any of the matters in this part of this List but not including fees taken in any court.

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*Eighth Schedule.—The Federal Railway Authority*

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*Ninth Schedule.—Provisions of Government of India Act continued in Force with Amendments until the Establishment of the Federation*

\* \* \*

*Tenth Schedule.—Enactments Repealed*

\* \* \*

## BURMA

Burma having previously been a Province of British India and the policy of His Majesty's Government as declared in January 1931 being that the prospects of constitutional advance held out to Burma as part of British India will not be prejudiced by separation the constitution of Burma as set up by The Government of Burma Act 1935 is necessarily based upon the same principles as have been embodied in The Government of India Act 1935<sup>(1)</sup> No attempt is made here to include sections which save for inevitable verbal differences are common to both Acts as such sections have been set out in that part of the book which deals with India The essential difference between the two cases is that the constitution of Burma is that of a unitary State and is not complicated by the special considerations arising from the concept of an Indian Federation and that the Government of Burma accordingly combines in its own hands functions which in the case of India have necessarily been distributed between the Federation and the Provinces Differing circumstances made it necessary to depart from the Indian model in the case of a few matters which are covered by the sections set out below Those sections of The Government of Burma Act 1935 which have been omitted are in substance identical with although they necessarily differ in some respects in form from corresponding sections of The Government of India Act 1935

The separation of Burma from India is legally effected by section 46 (2) of The Government of India Act 1935

### Act of the Imperial Parliament to make provision for the Government

[26 Geo V c 3—August 2 1935]

\* \* \*

#### PART I—INTRODUCTORY

\* \* \*

2 (1) All rights authority and jurisdiction heretofore belonging to His Majesty the King Emperor of India which appertain or are incidental to the government of the territories in Burma for the time being vested in him and all rights authority and jurisdiction exercisable by him by treaty grant usage sufferance or otherwise in or in relation to any other territories in Burma are exercisable by His Majesty except in so far as may be otherwise provided by or under this Act or as may be otherwise directed by His Majesty

(1) Page 243

(2) The said rights, authority and jurisdiction shall include any rights, authority or jurisdiction heretofore exercisable in relation to any territories in Burma by the Secretary of State, the Secretary of State in Council, the Governor-General of India, the Governor-General of India in Council, the Governor of Burma or the local Government of Burma, whether by delegation from His Majesty or otherwise.

## PART II.—THE EXECUTIVE

### *The Governor*

3. (1) The Governor of Burma is appointed by His Majesty by a Commission under the Royal Sign Manual and has all such powers and duties as are conferred or imposed on him by or under this Act, and such other powers of His Majesty as His Majesty may be pleased to assign to him.

(2) Any reference in this Act to the functions of the Governor shall be construed as not including a reference to powers exercisable by him by reason that they have been assigned to him by His Majesty under sub-section (1) of this section.

(3) The provisions of the first schedule to this Act shall have effect with respect to the salary and allowances of the Governor, and the provision to be made for enabling him to discharge conveniently and with dignity the duties of his office, and with respect to persons appointed to act temporarily as Governor.

\* \* \*

### *Administration*

5. (1) There shall be a Council of Ministers, not exceeding ten in number, to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Act required to exercise his functions or any of them in his discretion :

Provided that nothing in this sub-section shall be construed as preventing the Governor from exercising his individual judgment in any case where he is by or under this Act required so to do.

\* \* \*

7. (1) The functions of the Governor with respect to defence, ecclesiastical affairs, the affairs of the areas specified in part I of the second schedule to this Act, and the control of monetary policy, currency and coinage, and with respect to external affairs, except the relations between Burma and any part of His Majesty's dominions, shall be exercised by him in his discretion, and his functions in or in relation to areas in Burma which are not part of the territories of His Majesty shall be similarly exercised.



(2) To assist him in the exercise of those functions the Governor may appoint Counsellors, not exceeding three in number, whose salaries and conditions of service shall be such as may be prescribed by His Majesty in Council

\* \* \*

### PART III — THE LEGISLATURE

#### *General*

17 (1) There shall be for Burma a Legislature which shall consist of His Majesty represented by the Governor, and two Chambers to be known respectively as ' the Senate ' and " the House of Representatives "

(2) The Senate shall consist of 36 members, and the House of Representatives shall consist of 132 members

(3) The said members shall be chosen in accordance with the provisions in that behalf contained in the third schedule to this Act

18 (1) The Chambers of the Legislature shall be summoned to meet once at least in every year, and 12 months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session

(2) Subject to the provisions of this section, the Governor may in his discretion from time to time—

(a) summon the Chambers or either Chamber to meet at such time and place as he thinks fit ,

(b) prorogue the Chambers ,

(c) dissolve either Chamber or both Chambers simultaneously

(3) The Chambers shall be summoned to meet for their first session on a day not later than such day as may be specified in that behalf by His Majesty in Council

(4) Every Senate, unless sooner dissolved, shall continue for 7 years from the date appointed for the first meeting thereof and no longer, and every House of Representatives, unless sooner dissolved shall continue for 5 years from the date appointed for the first meeting thereof and no longer, and the expiration of the said period of 7 years or the said period of 5 years shall operate as a dissolution of the Senate or the House of Representatives, as the case may be

\* \* \*

### PART IV — LEGISLATION

#### *Powers of the Legislature as to Legislation*

33 (1) Subject to the provisions of this Act, the Legislature may make laws for the territories in Burma vested in His Majesty or any part thereof

(2) Without prejudice to the generality of the powers conferred by the preceding sub-section, no Act of the Legislature shall, on the ground that it would have extraterritorial operation, be deemed to be invalid in so far as it applies—

(a) to British subjects and servants of the Crown in any part of Burma ; or

(b) to British subjects domiciled in Burma wherever they may be ; or

(c) to, or to persons on, ships or aircraft registered in Burma wherever they may be ; or

(d) in the case of a law for the regulation or discipline of any naval, military, or air force raised in Burma, to members of and persons attached to, employed with or following, that force, wherever they may be.

\*                      \*                      \*

### *Legislative Procedure*

\*                      \*                      \*

36. (1) Unless the Governor in his discretion thinks fit to give his previous sanction, there shall not be introduced into, or moved in, either Chamber of the Legislature, any bill or any amendment which—

(a) repeals, amends or is repugnant to any provisions of any Act of Parliament extending to Burma ; or

(b) repeals, amends or is repugnant to any Governor's Act, or any ordinance promulgated in his discretion by the Governor ; or

(c) affects matters as respects which the Governor is by or under this Act required to act in his discretion ; or

(d) repeals, amends or affects any Act relating to any police force ; or

(e) affects the procedure for criminal proceedings in which European British subjects are concerned ; or

(f) subjects persons not resident in Burma to greater taxation than persons resident in Burma, or subjects companies not wholly controlled and managed in Burma to greater taxation than companies wholly controlled and managed therein ; or

(g) affects the grant of relief from any Burma tax on income in respect of income taxed or taxable in the United Kingdom ; or

(h) affects immigration into Burma.

(2) Nothing in this section affects the operation of any other provision in this Act which requires the previous sanction of the Governor to the introduction of any bill or the moving of any amendment

\* \* \*

### *Legislative Powers of Governor*

40 (1) Notwithstanding anything in this part of this Act, no Act of the Legislature shall apply to any area specified in the second schedule to this Act unless the Governor by public notification so directs, and the Governor in giving such a direction with respect to any Act may direct that the Act shall in its application to the area or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit

(2) The Governor may make regulations for the peace and good government of any such area and any regulations so made may repeal or amend any Act, whether passed before or after the commencement of this Act, which is for the time being applicable to the area

(3) The provisions of this Act with respect to the power of His Majesty to disallow Acts shall apply in relation to any such regulations as they apply in relation to Acts of the Legislature

\* \* \*

## PART V—RESTRICTIONS ON DISCRIMINATION, ETC

[Corresponds to Chapter III of Part V of "The Government of India Act, 1935," save that the protection given by the latter in India to British subjects domiciled in the United Kingdom, to companies registered in the United Kingdom and to ships and aircraft registered in the United Kingdom is extended in Burma equally to British subjects domiciled in India, Indian States subjects, companies registered in British India and ships and aircraft registered in British India.]

## PART VI—FINANCE

### *General*

55 Subject to the provisions of this part of this Act with respect to the Federated Shan States and to the provisions of this Act with respect to the Burma Railway Board, the expression "revenues of Burma" includes all revenues and public moneys raised or received by the Government of Burma

56 No burden shall be imposed on the revenues of Burma except for the purposes of Burma or some part of Burma

\* \* \*

*Proceedings in the Legislature*

59. (1) The Governor shall in respect of every financial year cause to be laid before both Chambers of the Legislature a statement of the estimated receipts and expenditure of the Government of Burma for that year, in this part of this Act referred to as the "annual financial statement."

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

(a) the sums required to meet expenditure described by this Act as expenditure charged upon the revenues of Burma ; and

(b) the sums required to meet other expenditure proposed to be made from the revenues of Burma,

and shall distinguish expenditure on revenue account from other expenditure, and indicate the sums, if any, which are included solely because the Governor has directed their inclusion as being necessary for the due discharge of any of his special responsibilities.

(3) *The following expenditure shall be expenditure charged on the revenues of Burma :—*

(a) the salary and allowances of the Governor and other expenditure relating to his office for which provision is required to be made by Order in Council ;

(b) debt charges for which the Government of Burma is liable, including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt ;

(c) the salaries and allowances of Ministers, of Counsellors, of the Financial Adviser, of the Advocate-General, and of the staff of the Financial Adviser ;

(d) the salaries, allowances, and pensions payable to and in respect of judges of the High Court ;

(e) expenditure for the purpose of the discharge by the Governor of his functions with respect to defence, ecclesiastical affairs, monetary policy, currency and coinage, his functions with respect to external affairs in so far as he is by or under this Act required in the exercise thereof to act in his discretion, his functions in or in relation to areas in Burma which are not part of the territories of His Majesty and his functions in relation to the administration of any area specified in part I of the second schedule to this Act : provided that the sum so charged in any year in respect of expenditure on ecclesiastical affairs shall not exceed 284,000 rupees, exclusive of pension charges ;

(f) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal ;

(g) any sums required to enable the Governor to pay such pensions and allowances as he in his discretion may deem suitable to members of the family or servants of any former Ruler of any territories in Burma ,

(h) any other expenditure declared by this Act or any Act of the Legislature to be so charged

(4) Any question whether any proposed expenditure falls within a class of expenditure charged on the revenues of Burma shall be decided by the Governor in his discretion

\* \* \*

### *Federated Shan States*

68 (1) Until His Majesty in Council makes other provision there shall continue to be a Federal Fund of the Federated Shan States under the control of the Governor in his discretion

(2) His Majesty may by Order in Council—

(a) require contributions to be made to the said Fund out of the revenues of or accruing in, the States comprised within the Federated Shan States ,

(b) require payments (representing the share of the annual receipts of the Government of Burma on revenue account properly allocable to the said States) to be made from time to time out of the revenues of Burma to the said Fund ,

(c) require payments (representing the share of the annual general expenses of the Government of Burma properly allocable to the said States) to be made from time to time out of the said Fund to the revenues of Burma , and

(d) make such other provision (including provision with respect to borrowing) as he thinks fit with respect to the manner in which the said Fund is to be dealt with

(3) Any payments to be made under paragraph (b) of the last preceding sub-section shall be charged on the revenues of Burma and the amounts thereof and of any payments to be made under paragraph (c) of the said sub-section shall be shown in the financial statements required by this part of this Act to be laid before the Burma Legislature but, save as aforesaid, nothing in this Act shall be construed as requiring any statement of payments into or out of the Federal Fund to be laid before that Legislature

(4) Such accounts shall be kept in respect of the receipts and expenditure of the said Fund as the Auditor-General of Burma may, with the approval of the Governor in his discretion, prescribe, and the said accounts shall be audited by, or on behalf of, the Auditor General of Burma, who shall make annual reports thereon to the Secretary of State

## PART VII.—THE BURMA RAILWAY BOARD

[Corresponds, *mutatis mutandis*, to the provisions for the Federal Railway Authority under "The Government of India Act, 1935."]

## PART VIII.—THE HIGH COURT

[Corresponds to Part IX, Chapter II, of "The Government of India Act, 1935."]

## PART IX.—THE SERVICES OF THE CROWN IN BURMA

[Corresponds closely to the provisions for the services under "The Government of India Act, 1935," the points of difference occurring in the sections reproduced below.]

*Recruitment by Secretary of State and Provisions as to certain Civil Posts*

101. (1) There shall be civil services in Burma corresponding to the Indian Civil Service and the Indian Police Service, which shall be known respectively as "the Burma Civil Service (Class 1)" and "the Burma Police (Class 1)," and appointment to those services shall, until Parliament otherwise determines, be made by the Secretary of State.

\* \* \*

102. Until Parliament otherwise determines, the Secretary of State may appoint persons to any civil medical service of, or civil medical post under, the Crown in Burma.

\* \* \*

*Special Provisions as to Burma Frontier Service*

113. (1) Appointments to the Burma Frontier Service shall be made by the Governor in his discretion, and in relation to persons who are or have been members of that service the powers of the Governor under this part of this Act shall be exercised by him in his discretion.

(2) Except so far as the Governor in his discretion otherwise directs, no Act of the Legislature for regulating the conditions of service of persons serving His Majesty in a civil capacity in Burma shall apply in relation to persons who are members of the Burma Frontier Service.

(3) Any salaries, allowances or pensions payable to or in respect of any persons who are or have been members of the Burma Frontier Service, and any Government contributions in respect of any such person to any pension fund or provident fund, shall be charged on the revenues of Burma.

\* \* \*

*Miscellaneous Provisions as to Civil Services*

117 In this part of this Act references to persons appointed to a civil service of the Crown in Burma include references to persons appointed before the commencement of this Act to a civil service of the Crown in India who were, before that date, serving in Burma and continue so to serve, and the requirement that no person shall be dismissed from the service of His Majesty by any authority subordinate to that by which he was appointed shall, in relation to any such person appointed by any authority in India, be construed as a requirement that he shall not be so dismissed by any authority subordinate to such authority in Burma as the Governor may, in his discretion, decide to correspond to the authority by which he was appointed

118 The powers conferred by the provisions of this part of this Act on the Secretary of State (other than powers in relation to defence services) shall not be exercisable by him except with the concurrence of his advisers and the advisers of the Secretary of State appointed under "The Government of India Act, 1935"

\* \* \*

## PART X—PROPERTY, CONTRACTS, LIABILITIES AND SUITS

[Corresponds generally to sections 172, 173, 175, 176 and 177 of "The Government of India Act, 1935"]

## PART XI—MISCELLANEOUS PROVISIONS AS TO RELATIONS WITH INDIA

134 Whereas it may appear that the distribution of property and liabilities effected by this Act and "The Government of India Act 1935," as between India and Burma may result in an undue burden on the revenues of the Federation, His Majesty in Council may if he thinks it just so to do, make provision for the payment to the revenues of the Federation out of the revenues of Burma, and for the charging on the revenues of Burma, of such periodical or other sums as may appear to him to be proper

135-137. [Correspond to the sections in "The Government of India Act, 1935," relating to customs duty on India-Burma trade, relief in respect of tax on income taxable both in India and in Burma and to the monetary system of Burma]

138 His Majesty may by Order in Council direct that, during such period as may be specified in the Order, immigration into Burma from India shall be subject to such restrictions as may be specified in the Order (being such restrictions as may have been mutually agreed before the commencement of this Act between the Governor

of Burma in Council and the Governor-General of India in Council and approved by the Secretary of State, or in default of agreement as may have been prescribed by the Secretary of State), and no other restrictions :

Provided that any such Order may be varied by a subsequent Order in Council in such manner as appears to His Majesty necessary to give effect to any agreement in that behalf made after the commencement of this Act by the Governor with the Governor-General of India or the Governor-General of India in Council.

## PART XII.—PROVISIONS IN EVENT OF FAILURE OF CONSTITUTIONAL MACHINERY

\* \* \*

## PART XIII.—PROVISIONS AS TO SECRETARY OF STATE

140. (1) There shall be not more than three persons, to be appointed from time to time by the Secretary of State, whose duty it shall be to advise the Secretary of State on any matter relating to Burma on which he may desire their advice.

\* \* \*

## PART XIV.—MISCELLANEOUS

\* \* \*

### SCHEDULES

#### *First Schedule*

#### PROVISIONS AS TO GOVERNOR OF BURMA

\* \* \*

#### *Second Schedule*

#### AREAS IN BURMA TO WHICH SPECIAL PROVISIONS APPLY

#### *Part I*

(1) The Federated Shan States as specified in notification No. 31 dated 27th September, 1922, of the Political Department of the Government of Burma as amended by any subsequent notification made before the commencement of this Act.

(2) The Shan States specified in notification No. 41 dated 5th October, 1922, of the Political Department of the Government of Burma as amended by any subsequent notification made before the commencement of this Act, other than the Federated Shan States.



- (3) The Arakan Hill Tracts
- (4) The Chin Hills District
- (5) The Kachin Hill Tracts of the Myitkyina, Bhamo and Katha Districts
- (6) The Somra Tract
- (7) The area known as "the Triangle"
- (8) The area known as "the Hukawng Valley" lying to the north of the Upper Chindwin District
- (9) The Salween District
- (10) All tribal territories which at the date of coming into operation of this Act are unadministered

### *Part II*

(1) Such parts of the Myitkyina and Bhamo Districts as are not included in part I of this schedule

(2) Such parts of the Upper Chindwin District as constitute the Homalin sub-division together with the village tracts which were included in the former Tamu township of the Mawlaik sub-division on the date preceding its abolition

(3) The Kyain township, the Myawaddy Circle of the Kaw Kareik township, and so much of the Karen Hill tracts situate in the eastern half of the Toungoo District and in the Thaton District as may be prescribed by His Majesty in Council

### *Third Schedule*

#### COMPOSITION OF THE BURMA LEGISLATURE

##### *General Qualification for Membership*

1 A person shall not be qualified to be chosen to fill a seat in the Legislature unless he—

(a) is a British subject, and

(b) is, in the case of a seat in the House of Representatives not less than 25 years of age, and in the case of a seat in the Senate, not less than 35 years of age, and

(c) possesses such, if any, of the other qualifications specified in, or prescribed under, this schedule as may be appropriate in his case

2 Upon the expiration of the term for which he is chosen to serve as a member of the Burma Legislature, a person, if otherwise duly qualified, shall be eligible to be chosen to serve for a further term

*The House of Representatives*

## 3. Of the seats in the House of Representatives—

- (a) 91 seats shall be general non-communal seats ;
- (b) 12 seats shall be filled by representatives of Karens ;
- (c) 8 seats shall be filled by representatives of Indians ;
- (d) 2 seats shall be filled by representatives of Anglo-Burmans ;
- (e) 3 seats shall be filled by representatives of Europeans ;
- (f) 11 seats shall be filled by representatives of commerce and industry ;
- (g) 1 seat shall be filled by a representative of Rangoon University ;
- (h) 2 seats shall be filled by representatives of Indian labour ;
- (i) 2 seats shall be filled by representatives of non-Indian labour.

References in this schedule to representatives of Indians do not include references to representatives of Indian labour.

## 4. So much of Burma as His Majesty may deem suitable for inclusion in any constituency, or in any constituency of a particular class, shall be divided into territorial constituencies—

- (i) for the election of persons to fill general non-communal seats ;
- (ii) for the election of persons as representatives of Karens ;
- (iii) for the election of persons as representatives of Indians ;
- (iv) for the election of persons as representatives of Indian labour ;
- (v) for the election of persons as representatives of non-Indian labour ;

and in the case of each class of constituency as aforesaid the total number of seats available shall be distributed between the constituencies by the assignment of one or more of those seats to each constituency.

## 5. In the case of the seats to be filled by representatives of Anglo-Burmans and the seats to be filled by representatives of Europeans, the whole of Burma shall be the constituency.

## 6. The provisions of the fourth schedule to this Act shall have effect with respect to the election of persons to hold the seats in the House of Representatives mentioned in the two last preceding paragraphs.

7 Persons shall be chosen in such manner as may be prescribed to hold the seats to be filled by representatives of commerce and industry and Rangoon University

8 Of the seats to be filled by representatives of commerce and industry, one shall be filled by a representative of the Burmese Chamber of Commerce, two shall be filled by representatives of the Burma Indian Chamber of Commerce, one shall be filled by a representative of the Nattukottai Chettiars' Association, five shall be filled by representatives of the Burma Chamber of Commerce, one shall be filled by a representative of the Rangoon Trades Association and one shall be filled by a representative of the Chinese Chamber of Commerce

9 A person shall not be qualified to be chosen to fill a seat in the House of Representatives unless—

(a) in the case of a seat to be filled by representatives of Commerce and Industry, of a representative of Rangoon University or of representatives of Indian labour or non Indian labour, he possesses such qualifications as may be prescribed,

(b) in the case of any other seat, he is entitled to vote at an election to fill some seat in the House of Representatives

### *The Senate*

10 Of the 36 seats in the Senate, 18 shall be filled by persons elected by the members of the House of Representatives in accordance with the system of proportional representation by means of the single transferable vote, and 18 shall be filled by persons chosen by the Governor in his discretion

11 In the event of a casual vacancy occurring in a seat held by an elected senator who was a Karen, an Indian, an Anglo Burman or a European, no person shall be eligible to fill the vacancy who is not, as the case may be, a Karen, an Indian, an Anglo Burman or a European

12 (1) A person shall not be qualified to be chosen to hold a seat in the Senate unless he—

(i) was, in the financial year preceding that in which the election is held, assessed to income tax in Burma on an income of 12 000 rupees a year or over, or

(ii) paid, during and in respect of the year of assessment preceding that in which the election is held, land revenue of 1,000 rupees or over in Lower Burma or 500 rupees or over in Upper Burma, or

(iii) has previous official service in Burma as a member of the Governor's Executive Council under the Acts repealed by "The Government of India Act, 1935," or as a Minister, or as a judge of the High Court, or as a permanent Deputy Commissioner, or as a permanent district and sessions judge ; or

(iv) has rendered other public service recognised by the conferment of a title equal to, or higher than, the Burman title of Taing kyo Pyi kyo Saung ; or

(v) possesses such other qualifications in respect of the rendering of distinguished public service as the Governor in his discretion may prescribe.

(2) For the purposes of this paragraph—

(a) where a firm has been assessed to income tax in Burma in any year, every partner in that firm shall be deemed to have been assessed to that tax in that year to an amount, to be certified in the prescribed manner, equal to his share in the firm's income on which the tax was so assessed ;

(b) where water rate is levied in addition to land revenue, payment thereof shall be treated as payment of land revenue.

\* \* \*

### *Fourth Schedule*

#### PROVISIONS AS TO FRANCHISE IN BURMA

##### *General Constituencies*

\* \* \*

3. No person shall be included in the electoral roll for any general constituency unless he has attained the age of 18 years and is either a British subject or a subject of a prescribed Indian State, or, if it is so prescribed, a subject of any Indian State.

\* \* \*

### *Fifth Schedule*

#### FORMS OF OATHS OR AFFIRMATIONS

\* \* \*

### *Sixth Schedule*

#### THE BURMA RAILWAY BOARD

[Detailed provisions, the counterpart to which under "The Government of India Act, 1935," are to be found partly in that Act and partly in the eighth schedule thereto.]

## SOUTHERN RHODESIA

1. Letters Patent providing for the Constitution of Responsible Government.—Westminster, September 1, 1923

Text in *Statutory Rules and Orders*, 1923, page 1078

*Amendments*

## ACTS OF THE LOCAL LEGISLATURE

June 19, 1925                      Text in *Statute Law of Southern Rhodesia*  
1925, page 16

April 21, 1933                      Text in *Statute Law of Southern Rhodesia*,  
1933, page 13

October 23, 1937

## LETTERS PATENT

Westminster, May 28, 1927                      Text in *Statutory Rules and*  
*Orders*, 1927, page 1912

Westminster, April 6, 1934                      .. Text in *Statutory Rules and*  
*Orders*, 1934, Vol II, page 780

Westminster, March 25, 1937                      Text in *Colony of Southern*  
*Rhodesia Government Gazette*, October 22, 1937

2. Letters Patent constituting the Office of Governor—Westminster, September 1, 1923.

Text in *Statutory Rules and Orders*, 1923, page 1096

*Amendment*

## LETTERS PATENT

August 30, 1926                      Text in *Statutory Rules and Orders*, 1926  
page 1403

3. Royal Instructions to the Governor and Commander-in-Chief —St James's, September 1, 1923

*Amendments*

## ADDITIONAL INSTRUCTIONS

St James's, August 30 1926

St James's, March 25, 1937.

- 1 Letters Patent (Constitution), 1923 (as amended to 1937).

*George V, by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British dominions beyond the Seas King, Defender of the Faith, Emperor of India, unto all to whom these presents shall come, Greeting*

Whereas by "The Southern Rhodesia Order in Council, 1898,"<sup>(1)</sup> as added to, altered or amended by divers further Orders in Council provision was made for the administration of the Government of certain territories of Africa under our protection and known as "Southern Rhodesia":

And whereas by an Order in our Privy Council bearing date the 30th day of July, 1923,<sup>(2)</sup> and known as "The Southern Rhodesia (Annexation) Order in Council, 1923," it is provided that the territories within the limits of "The Southern Rhodesia Order in Council, 1898," and known as "Southern Rhodesia," shall, from and after the coming into operation of the said Order, be annexed to and form part of our dominions, and shall be known as "the Colony of Southern Rhodesia":

And whereas we are minded to provide for the establishment of responsible government, subject to certain limitations hereinafter set forth, in our said Colony:

Now know ye that we do declare our will and pleasure to be as follows:—

### *The Legislature*

1. In place of the Legislative Council now subsisting there shall be a Legislature consisting of a Legislative Council and Legislative Assembly, constituted as hereinafter provided.

Subject to the provisos hereinafter contained, the constitution, appointment, and powers of the Legislative Council now subsisting shall continue in force and the duration of the said Council shall extend until the date of the nomination of members for election to the Legislative Assembly, and no longer:

Provided however that until the said date—

(a) The persons other than the Administrator who at the commencement of these our Letters Patent are members of the said Legislative Council now subsisting shall continue to be members thereof;

(b) The Governor of the Colony shall be a member of the said Council in place of the Administrator, and shall preside at the meetings thereof, and in his absence such other member of the said Council as may be appointed in writing by the Governor shall preside;

(c) The power of the British South Africa Company to remove or suspend nominated members of the said Council shall be vested in the Governor, and whenever the seat of a nominated member becomes vacant by death, resignation or removal, the Governor shall appoint a successor.

<sup>(1)</sup> *State Papers*, Vol. XC, page 236.

<sup>(2)</sup> *Ibid.*, Vol. CXVII, page 92.

*The Legislative Council*

2 It shall be lawful at any time after the commencement of these our Letters Patent for the Legislative Assembly to pass a law, subject as hereinafter provided, constituting the Legislative Council, and until any such law shall have been passed and brought into operation the Legislative Assembly shall be for all purposes the Legislature within the meaning of these our Letters Patent

*The Legislative Assembly*

3 The Legislative Assembly shall consist of 30 members who shall be elected by the voters in and for the several electoral districts as hereinafter defined, and for the purpose of constituting the Legislative Assembly the Governor, before the time appointed for the first meeting thereof, and thereafter from time to time as occasion shall require, and without undue delay, may in our name issue writs under the Public Seal of the Colony for the general election of members to serve in the Legislative Assembly

4 The qualifications and disqualifications of persons to be voters at any election of members of the Legislative Assembly to be held under the provisions of these our Letters Patent shall be those prescribed by the existing electoral laws of the Colony, as hereinafter defined, or by any laws amending or substituted for the same hereafter to be passed by the Legislature constituted by these our Letters Patent

5 (1) For the purpose of the first election of members of the Legislative Assembly, to be held under the provisions of these our Letters Patent, the voters shall be the persons whose names appear on the register hereinafter mentioned

(2) For the purpose of the said first election the electoral districts shall be those constituted under the High Commissioner's proclamation No 28 of 1923 entitled "The Electoral Districts Delimitation Proclamation, 1923," as amended by proclamation No 35 of 1923. It shall be lawful for the Governor by proclamation published in the *Gazette* to declare what number of members shall be elected to the Legislative Assembly for each district, and where more than one member is to be returned for any district to make any necessary amendments in the existing electoral laws of the Colony with regard to the method of voting and the general conduct of the election

(3) For the purpose of the said first election the Governor shall as soon as practicable after the date of the commencement of these our Letters Patent cause lists of voters resident in each such electoral district at that date to be compiled in accordance with the existing electoral laws of the Colony, and the lists so compiled shall constitute the register of voters for the said first election.

6. Subject to the provisions of the last preceding section the registration of voters, the preparation of lists of voters, the nomination of candidates, the conduct of elections and the hearing of election petitions shall be carried out in accordance with the existing electoral laws of the Colony, or any laws amending or substituted for the same hereafter to be passed by the Legislature constituted by these our Letters Patent.

7. There shall be a biennial registration of voters in every electoral district commencing not later than the last day of December in the year next but one after the commencement of the last preceding registration, and so on during each successive biennial period.

8. Upon the completion of the voters' lists made in pursuance of the first biennial, and thereafter of every alternate biennial, registration it shall be lawful for the Legislature by an Act to be passed for that purpose if required by the growth or distribution of the population to redivide Southern Rhodesia into electoral districts for the purpose of the election of members of the Legislative Assembly, and by such Act to determine the number of members to be returned for each such electoral district.

9. Any redivision of the Colony made as aforesaid shall come into operation at the next general election held after the completion of the redivision, and not earlier.

10. Until otherwise provided by the Legislature constituted by these our Letters Patent, persons qualified under the existing electoral laws of the Colony to become members of the Legislative Council now subsisting shall be qualified to become members of the Legislative Assembly.

11. (1) The Legislative Assembly shall, on their first meeting, before proceeding to the despatch of any other business, elect one of their members to be Speaker and another to be Deputy Speaker and Chairman of Committees (hereinafter called "the Deputy Speaker") of the said Assembly (subject in both cases to confirmation by the Governor) until the dissolution thereof, and in case of vacancy in either office another Speaker or Deputy Speaker, as the case may be, shall be elected in like manner and subject to such confirmation as aforesaid.

(2) Notwithstanding the provisions of the preceding subsection it shall be lawful for the Legislative Assembly, if they see fit, to elect any suitable person other than one of their members to be Speaker, and any person so elected shall be entitled to exercise and perform all the powers and duties by these our Letters Patent, including the power and duty to exercise a casting vote as provided in section 21 thereof, or by any standing rules and orders from time to time in force under the provisions of section 23 thereof, or otherwise howsoever, vested in the Speaker of the Legislative Assembly.



12 The Speaker, or in his absence the Deputy Speaker, and in the absence of both Speaker and Deputy Speaker some member elected by the Legislative Assembly, shall preside at the meetings thereof

13 The Legislative Assembly shall not be disqualified from the transaction of business on account of any vacancies among the members thereof, but the said Assembly shall not be competent to proceed to the despatch of business unless ten members be present

14 Any member of the Legislative Assembly may resign his seat therein by writing under his hand addressed to the Speaker, and upon the receipt of such resignation by the Speaker the seat of such member shall become vacant

Provided that no member shall, without the permission of the Legislative Assembly, resign his seat while any proceedings are pending in respect of his election if it is alleged in those proceedings that any corrupt or illegal practices took place at that election, or while any proceedings are contemplated or pending in respect of his conduct in, or as a member of the Legislative Assembly

15 (1) Whenever a vacancy occurs in the Legislative Assembly from any cause, other than as the result of an election petition, the Speaker shall, upon a resolution of the said Assembly declaring such vacancy, inform the Governor thereof

(2) Provided that if such vacancy occurs when the Legislative Assembly is not in session, the Speaker, or in the case of the death, incapacity, or absence from the Colony of the Speaker, the Clerk to the Assembly, shall, on a certificate under the hands of two members of the Assembly, stating that such vacancy has occurred and the cause thereof, inform the Governor thereof

(3) The Governor on receiving such information shall without delay cause the necessary steps to be taken for filling such vacancy in accordance with the law for the time being in force in the Colony under the provisions of section 6 of these our Letters Patent

### *Legislative Council and Legislative Assembly*

16 (1) There shall be a session of the Legislature once at least in every year, so that a period of 12 months shall not intervene between the last sitting of the Legislature in one session and the first sitting thereof in the next session

(2) The first session shall be held within 8 months of the date when these our Letters Patent shall commence to take effect

17 The first and every other session of the Legislature shall be held in such place and at such time as may be notified by the Governor by proclamation in the *Gazette*

18. (1) The Governor may from time to time prorogue the Legislature by proclamation, which shall be published in the *Gazette*, and may in like manner, whenever he shall think fit, dissolve the Legislative Council and the Legislative Assembly simultaneously; or the Legislative Assembly alone.

(2) The Governor shall dissolve the Legislative Council and the Legislative Assembly at the expiration of 5 years from the date of the first meeting thereof.

19. The Governor may transmit by message to the Legislative Council and the Legislative Assembly the draft of any bill which it may appear to him desirable to introduce, and all such drafts shall be taken into consideration by the said Council and Assembly, as the case may be, in such convenient manner as shall be provided in that behalf by rules of procedure.

20. (1) Every member of the Legislative Council and Legislative Assembly shall, before being permitted to sit or vote therein, take and subscribe the following oath before the President or Speaker respectively, or before such person as may be appointed thereto by the Governor should such oath be required to be taken before the appointment or election of a President or Speaker as the case may be :—

“ I, A.B., do swear that I will be faithful and bear true allegiance to His Majesty King George V, his heirs and successors, according to law. So help me God.”

(2) Provided that any person authorised by law to make a solemn affirmation or declaration instead of taking an oath, may make such affirmation or declaration in lieu of such oath.

21. Subject to the provisions contained in section 26 of these our Letters Patent, all questions in the Legislative Council or Legislative Assembly shall be determined by a majority of the votes of members present, other than the President, Speaker or presiding member, who shall, however, have and exercise a casting vote in case of an equality of votes.

22. If any member of the Legislative Council or Legislative Assembly—

(1) shall be absent, except on the ground of illness, from the sittings of the Legislative Council or the Legislative Assembly, as the case may be, for a period of one month during any session without the leave of the Legislative Council or the Legislative Assembly, as the case may be ; or

(2) [Repealed.]

(3) shall take any oath, or make any declaration or acknowledgment of allegiance, obedience, or adherence to any foreign State or Power, or

(4) shall do, concur in, or adopt any act whereby he may become the subject or citizen of any such State or Power, or

(5) shall become an insolvent or take advantage of any law for the relief of insolvent debtors, or

(6) shall be attainted of treason, or be sentenced to imprisonment without the option of a fine for a term of not less than 12 months, or

(7) shall become of unsound mind, or

(8) shall accept any office of profit under the Crown other than that of a Minister, or that of an officer of our naval and military forces on retired or half pay or that of an officer or member of the defence forces of the Colony whose services are not wholly employed by the Colony,

his seat shall become vacant, and if any person under any of the disqualifications herein mentioned shall, whilst so disqualified, knowingly sit or vote as a member of the said Council or Assembly, such person shall forfeit the sum of £100, to be recovered by the Attorney-General for the benefit of the Treasury by action in the High Court

Provided that a person in receipt of pension from the Crown shall not be deemed to hold an office of profit under the Crown within the meaning of this section

23 (1) The Legislative Council and Legislative Assembly in their first session, and from time to time afterwards as there shall be occasion, shall each adopt standing rules and orders, joint as well as otherwise, for the regulation and orderly conduct of their proceedings and the despatch of business, and for the order in which the said Council and Assembly shall confer, correspond, and communicate with each other, and for the passing intituling, and numbering of bills, and for the presentation of the same to the Governor for our assent

(2) [Repealed]

(3) Provided that the standing rules and orders of the Legislative Council as now subsisting shall, until altered, added to, or amended, be the standing rules and orders of the Legislative Council and of the Legislative Assembly

24 The salary of the President of the Legislative Council and of the Speaker of the Legislative Assembly shall be such as may be prescribed by any law of the Colony, and the Chief Clerk for the time being of the Legislative Council and of the Legislative Assembly shall respectively be removable from office only in accordance with a vote of the House of which he is an officer.

25. (1) It shall be lawful for the Legislature of the Colony by any law to define the privileges, immunities, and powers to be held, enjoyed, and exercised by the Legislative Council and Legislative Assembly, and by the members thereof respectively :

Provided that no such privileges, immunities, or powers shall exceed those for the time being held, enjoyed, and exercised by the Commons House of Parliament of our United Kingdom, or the members thereof.

(2) Until the Legislature shall so define the privileges, immunities, and powers of its members those which are now held, enjoyed, and exercised by the members of the subsisting Legislative Council shall be held, enjoyed and exercised by the members of the Legislative Council and Legislative Assembly.

### *Legislation*

26. (1) It shall be lawful for us and our successors, by and with the advice and consent of the Legislature, subject to the provisions of these our Letters Patent, to make all laws, to be entitled " Acts," which shall be required for the peace, order and good government of the Colony.

(2) A law passed by the Legislature may repeal or alter any of the provisions of these our Letters Patent, save those contained in this section, and those contained in section 28 (relating to the reservation of bills), sections 39-47 (relating to native administration), and section 55 (relating to the salary of the Governor), and may likewise repeal or alter any of the provisions of any Order in our Privy Council extending to Southern Rhodesia other than provisions affecting any matter mentioned in this sub-section :

Provided however that no proposed law for the constitution of a Legislative Council in pursuance of section 2 of these our Letters Patent shall repeal or alter any of the provisions relating to the Legislative Council contained in these our Letters Patent, and such provisions shall not be repealed or altered save by a law passed by both Houses of the Legislature, after the constitution of a Legislative Council as aforesaid :

Provided further that no proposed law for the repeal or alteration of any such provisions of these our Letters Patent as may be repealed or altered by the Legislature as aforesaid shall be valid unless it shall be affirmed by not less than two-thirds of the total number of members of each House of the Legislature or, pending the constitution of a Legislative Council, of the Legislative Assembly.

(3) Any law made in contravention of the limitations imposed by sub-section (2) of this section shall to the extent of such contravention but not otherwise be and remain absolutely void and inoperative.

27. When any law has been passed by the Legislature it shall be presented for our assent to the Governor, who shall declare according

to his discretion, but subject to this constitution and any instructions in that behalf given him, under our Sign Manual and Signet, or through a Secretary of State, that he assents in our name, or that he withholds assent, or that he reserves the law for the signification of our pleasure

28 Unless he shall have previously obtained our instructions upon such law through a Secretary of State, or unless such law shall contain a clause suspending the operation thereof until the signification in the Colony of our pleasure thereupon, the Governor shall reserve —

(a) any law, save in respect of the supply of arms, ammunition, or liquor to natives, whereby natives may be subjected or made liable to any conditions, disabilities or restrictions to which persons of European descent are not also subjected or made liable

(b) any law which may repeal, alter or amend, or is in any way repugnant to or inconsistent with such provisions of these our Letters Patent, as may under these our Letters Patent be repealed or altered by the Legislature

(c) any law constituting the Legislative Council passed in pursuance of section 2 of these our Letters Patent

(d) any law which may repeal, alter or amend, or is in any way repugnant to or inconsistent with ' The Land Apportionment Act, 1930,' of the Legislature of the Colony

29 The Governor may return to the Legislative Council and Legislative Assembly any proposed law so presented to him, and may transmit therewith any amendments which he may recommend, and the Legislative Council and Legislative Assembly may deal with the recommendation

30 No law passed by the Legislature shall take effect until either the Governor shall have assented thereto in our name and on our behalf, and shall have signed the same in token of such assent, or until we shall have given our assent thereto by our Order in our Privy Council

31 It shall be lawful for us, our heirs and successors, to disallow any law within one year from the date of the Governor's assent thereto, and such disallowance, on being made known by the Governor by speech or message to the Legislative Council and the Legislative Assembly, or by proclamation in the *Gazette*, shall annul the law from the day when the disallowance is so made known

32 A proposed law reserved for our pleasure shall not have any force unless and until, within one year from the day on which it was presented to the Governor for our assent, the Governor makes known, by speech or message to the Legislative Council and the Legislative Assembly, or by proclamation in the *Gazette*, that it has received our assent.

33. Whenever any law has been reserved for the signification of our pleasure thereon, and the Governor shall signify, either by speech or message to the Legislature or by proclamation in the *Gazette*, that such law has been laid before us in our Privy Council, and that we have been pleased to assent to the same, an entry shall be made in the journals of the Legislative Council and Legislative Assembly of every such speech, message or proclamation, and a duplicate thereof duly attested shall be delivered to the proper officer, to be kept amongst the records of the Colony.

34. The Governor shall cause every law to which he shall have assented in our name or to which we shall have given our assent as aforesaid to be printed in the *Gazette* for general information.

35. As soon as may be after any law shall have been assented to in our name by the Governor or, having been reserved for the signification of our pleasure, our assent thereto shall, in the manner aforesaid, have been signified by the Governor, the Clerk of the Legislative Assembly shall cause a fair copy of such law signed by the Governor to be enrolled on record in the office of the Registrar of the High Court, and such copy shall be conclusive evidence as to the provisions of every such law : provided however, that the validity of any such law shall not depend upon the enrolment thereof.

36. Whenever any law assented to by the Governor in our name as aforesaid has been disallowed by us, the Governor shall cause notice of such disallowance to be published in the *Gazette* and a certificate of such disallowance, certified under the Public Seal of the Colony, to be enrolled in the office of the Registrar of the High Court.

### *The Ministry*

37. (1) The Governor may appoint such officers as he thinks fit, not exceeding six in number, to be Ministers, one of whom he shall designate as head of the Ministry, who shall be styled "the Prime Minister," and may assign to each Minister the headship of such department or departments as he shall think fit.

(2) Appointments to the office of Minister shall be made by the Governor in our name, and such offices shall be held during our pleasure.

(3) After the first general election of members of the Legislative Assembly no Minister shall hold office for a longer period than 4 months unless he is or becomes a member of either House of the Legislature.

(4) No Minister shall vacate his seat in the Legislative Council or Legislative Assembly by reason of his appointment to or retention of an office in the Ministry.

(5) Every Minister shall have the right to sit and speak both in the Legislative Council and Legislative Assembly, but shall vote only in the House of which he is a member.

*Judges*

38 The judges of the High Court—

(1) shall be appointed by the Governor in Council ,

(2) shall not be removed except by the Governor in Council on an address from the Legislative Council and Legislative Assembly in the same session praying for such removal on the ground of proved misbehaviour or incapacity ,

(3) shall receive such remuneration as shall from time to time be prescribed by law, but the remuneration of a judge shall not be diminished during his tenure of office, and the remuneration of the present judges shall not be diminished, and their commissions shall continue as heretofore

*Native Administration*

39 (1) There shall be a Native Department, the permanent head of which shall be styled "the Chief Native Commissioner" and shall be appointed by the Governor in Council, and the Assistant Chief Native Commissioner and all Superintendents of Natives, Native Commissioners and Assistant Native Commissioners or any officers appointed to exercise the functions now exercised by the aforesaid officers or any of them shall be appointed in the like manner, and the said officers shall continue to perform the duties at present assigned to them, subject to any alterations or additions which may be made from time to time by Act of the Legislature of the Colony or order of the Governor in Council

(2) The salaries of the officers mentioned in the preceding sub section shall be fixed by the Governor in Council and shall not be increased or diminished without his approval

(3) The officers mentioned in this section shall be subject to the laws of the Colony for the time being governing the public service of the Colony

*Provided that no such officer shall be removed from office without the approval of the Governor in Council*

And provided, further, that the Chief Native Commissioner shall not be removed from his office without the approval of the Secretary of State

40 No conditions, disabilities or restrictions which do not equally apply to persons of European descent shall, without the previous consent of the Secretary of State, be imposed upon natives (save in respect of the supply of arms, ammunition and liquor) by any proclamation, regulation or other instrument issued under the provisions of any law, unless such conditions disabilities or restrictions shall have been explicitly prescribed, defined and limited in such law

41 (1) There shall be established a Board of Trustees, which shall consist of a chairman, who shall be nominated and appointed by the Secretary of State, and two members, one of whom shall be the person for the time being holding the office of Chief Justice of the Colony and the other shall be the person for the time being holding the office of Chief Native Commissioner in the Colony.

(2) (a) Whenever through illness, absence or other cause the chairman of the Board of Trustees is precluded from exercising his functions on the Board, a deputy chairman, who shall be nominated and appointed by the Secretary of State, shall act as chairman of the Board.

(b) Whenever through illness, absence or other cause any member of the Board of Trustees is precluded from exercising his functions on the Board, the person duly authorised to act for such member in his official capacity in the Colony shall act for such member on the Board.

(3) The Board of Trustees may make rules, which shall be subject to the approval of the Secretary of State, for regulating the proceedings of the Board.

42. (1) The lands known as "native reserves," which are fully described in the schedule to these our Letters Patent, are hereby vested in the Board of Trustees, and, subject to the provisions of this section, are set apart for the sole and exclusive use and occupation of the indigenous native inhabitants of the Colony.

(2) Save in the exercise of any right which has been heretofore acquired in terms of the mining laws of the Colony, no person other than an indigenous native inhabitant of the Colony shall occupy any portion of a native reserve except in accordance with such regulations as may be framed by the Governor in Council with the approval of the Secretary of State.

(3) The power reserved to the High Commissioner in sections 105 and 106 of "The Water Act, 1927," and sections 16 and 18 of "The Native Reserves Forest Produce Act, 1929," of the Legislature of the Colony shall remain of full force and effect and shall be deemed to be transferred to and vested in the Board of Trustees.

(4) The Governor in Council may make regulations, which shall be subject to the approval of the Secretary of State, for the control of all revenue derived from the land or other natural resources of the native reserves and for its administration in the interests of the native inhabitants of such reserves.

43. (1) Save in any special case, and then only with the permission in writing of the Secretary of State, and subject to such conditions as he may prescribe, which shall include adequate compensation in land, no native reserve or any portion thereof shall be alienated except subject to the provisions of this section.



(2) The Government of the Colony shall retain the mineral rights in the native reserves. If the Government should require any such land for the purpose of mineral development or as sites of townships or for railways or other public works the Governor in Council may upon good and sufficient cause shown, with the approval of the Board of Trustees, order the natives to remove from such land or any portion thereof and shall assign to them just and liberal compensation in land elsewhere situate in as convenient a position as possible sufficient and suitable for their agricultural and pastoral requirements, containing a fair and equitable proportion of springs or permanent water and as far as possible, equally suitable for their requirements in all respects as the land from which they are ordered to remove.

Provided that natives shall not be removed from such land for the purpose of creating sites of townships unless the Board of Trustees is satisfied that such sites are required for the development of important mineral discoveries.

(3) Any land which is released from a native reserve in terms of sub section (2) of this section shall forthwith vest in the Governor, together with any revenues accruing therefrom for the purposes of the public service of the Colony, and any land which is assigned to the natives as compensation whether under sub section (1) or sub-section (2) of this section, shall forthwith vest in the Board of Trustees and become part of the native reserves.

44 It shall be lawful for the Governor in Council, with the consent of the Board of Trustees to make such adjustments of the boundaries of native reserves as are desirable for the purpose of—

(a) more clearly demarcating such boundaries by reference to natural topographical features or

(b) better administration

but in the case of any such adjustment the area of no native reserve shall be materially affected or diminished thereby.

45 (1) Save in the exercise of any right given or any duty imposed by any law of the Colony or in the execution of the process of a competent court, no person shall remove any natives from any krial or from any land assigned to them for occupation except after full enquiry by and by order of the Governor in Council.

(2) If any person contravenes the provisions of the preceding sub section he shall in addition to any other proceedings to which he may be liable be guilty of an offence and on conviction before the High Court of the Colony shall be liable to imprisonment, with or without hard labour, for any period not exceeding 2 years, or to a fine not exceeding £100, or to both such imprisonment and such fine.

46 No contract for encumbering or alienating land, which is the property of a native and is situated in the European area as defined in 'The Land Apportionment Act, 1930,' of the Legislature of the

Colony, shall be valid unless the contract is made in the presence of a magistrate, is attested by him and bears a certificate signed by him stating that the consideration for the contract is fair and reasonable and that he has satisfied himself that the native understands the transaction.

47. [Repealed.]

*Lands, Land Revenues and Other Assets*

48. The Governor in Council shall pay to the Lords Commissioners of our Treasury not later than the 1st day of January, 1924, the sum of £2,000,000 together with interest thereon at the rate of 5 per cent. per annum from the 1st day of October, 1923, to the date of payment, and shall further repay to the Lords Commissioners of our Treasury on the same date a sum representing the two amounts of £150,000 each advanced from our Exchequer to the Administration of Southern Rhodesia in the years 1922 and 1923 in accordance with the provisions of "The Southern Rhodesia Loan Ordinance, No. 13 of 1922," together with the interest thereon at the rates fixed by the Lords Commissioners of our Treasury which shall have accrued to the date of payment.

49. In consideration of the payments referred to in the preceding section of these our Letters Patent, the following provisions shall take effect :—

(1) All rights reserved by the British South Africa Company in or in relation to any lands within the Colony which shall, before the commencement of these our Letters Patent, have been alienated by the Company, whether by grant or by permit of occupation or by lease giving option of purchase or by any other instrument whatsoever, shall, save and except the Company's rights to minerals therein, vest in the Governor for the purposes of the public service of the Colony together with all other rights and interests in such lands to us belonging and he shall have the right to receive in our name and on our behalf for such purposes all purchase money remaining unpaid, all rents of any description remaining unpaid and to become payable, and all interest remaining unpaid and to become payable on mortgage-bonds held by the Company as security for unpaid purchase money, in respect of any such lands, and all other revenue whatsoever that may be derived therefrom, and it shall be lawful for him to exercise and perform in our name and on our behalf all such powers and functions with regard to such lands and the instruments relating thereto as might have been exercised and performed by the Company if these our Letters Patent had not been made.

(2) All lands and rights or interests in any lands within the Colony other than the native reserves which, at the commencement of these our Letters Patent, are unalienated and any lands and

rights or interests in any lands reverting to us under any instrument referred to in the preceding sub section or otherwise shall save and except the Company's rights to minerals therein, vest in the Governor together with any revenues accruing therefrom, for the purposes of the public service of the Colony

Provided that the Company shall be deemed to have paid to us the full purchase price of all lands within the Colony appropriated by it for its commercial purposes and the Governor in Council shall as soon as may be practicable after the commencement of these our Letters Patent issue title to the Company in respect of such lands in such terms and on such conditions as to payment of the usual quit rent to the Governor in Council and otherwise as may in the event of disagreement between the Company and the Governor in Council be deemed to be proper by the Secretary of State

(3) There shall also vest in the Governor for the purposes of the public service of the Colony—

(a) All the public works and buildings used by the Company exclusively or mainly for the administrative or public purposes of Southern Rhodesia and acquired by us from the Company

(b) The movable assets of the Administration of Southern Rhodesia acquired by us from the Company

(c) The debtor balances due to the Administration of Southern Rhodesia acquired by us from the Company

(d) The assets of the Company's Land Settlement Department acquired by us from the Company

Provided that the Colony shall assume all liability for the creditor balances due by the Administration of Southern Rhodesia and by the Company's Land Settlement Department, and, further, any liability arising directly or indirectly out of the administration of Southern Rhodesia prior to these our Letters Patent or in consequence of the termination of the Company's administration, save and except our liability in respect of the administrative deficits of the Company

### *General Provisions*

50 All taxes, imposts, rates, and duties, and all territorial, casual and other revenues of the Crown from whatever source arising within the Colony over which the Legislative Council and Legislative Assembly have power of appropriation, shall form one Consolidated Revenue Fund to be appropriated to the public service of the Colony in the manner and subject to the charges hereinafter mentioned

51 (1) The Consolidated Revenue Fund shall be permanently charged with all the costs, charges and expenses incident to the collection, management, and receipt thereof

(2) All such costs, charges and expenses shall be subject to be reviewed and audited in such manner as may from time to time be directed by any law passed by the Legislature.

52. All bills for appropriating any part of the Consolidated Revenue Fund or for imposing, altering, or repealing any rate, tax, duty, or impost shall originate in the Legislative Assembly.

53. The Legislative Council may not alter any money bill passed by the Legislative Assembly, but may return to the Legislative Assembly any such bill and may transmit therewith any amendments which they recommend, and the Legislative Assembly shall consider and deal with such recommendation, and thereafter the Legislative Council may either accept or reject such bill but may not alter it.

54. (1) The Legislative Assembly shall not originate or pass any vote, resolution, address or bill for the appropriation of any part of the Consolidated Revenue Fund or of any tax or impost to any purpose unless such appropriation has been recommended by message from the Governor during the session in which such vote, resolution, address or bill is proposed.

(2) No part of the Consolidated Revenue Fund shall be issued except in pursuance of a warrant under the hand of the Governor directed to the Minister of Finance.

55. (1) There shall be payable to us, in every year, out of the Consolidated Revenue Fund, for the salary of the Governor the sum of £4,000.

(2) The salary of the Governor shall not be altered during his continuance in office.

56. All persons in the public service of Southern Rhodesia at the commencement of these our Letters Patent shall become public officers of the Colony, and the appointment to, and removal from, all public offices under the Government of the Colony hereafter to become vacant or to be created, save those of Ministers and officers of the Native Department mentioned in section 39 of these our Letters Patent, shall, subject to any law hereafter in force in the Colony, be vested in the Governor in Council: Provided that no public officer in the Colony who shall have been appointed to his office before the date of the commencement of these our Letters Patent shall be removed from his office or have his emoluments reduced save in accordance with the law, regulations or conditions governing his services at the date of these our Letters Patent.

57. (1) All pensions and gratuities which have been granted to persons who have retired from the public service of Southern Rhodesia before the date of the commencement of these our Letters Patent shall be governed by the law or rules under which they were granted.

(2) A public officer who shall have been appointed to his office in Southern Rhodesia before the date of the commencement of these our Letters Patent, including any public officer who shall, whether before or after that date, have been transferred to the service of any other Administration, shall be entitled to have his claim to pension or gratuity governed by the law or rules which now regulate the grant of pensions and gratuities in Southern Rhodesia, unless he shall be entitled under any law or rules which may hereafter be substituted for the same to exercise an option to have his said claim governed by such substituted law or rules, and duly exercises the said option

(3) All pensions and gratuities which have been or may be hereafter granted in accordance with the law or rules which at the date of such grant regulated or regulate the grant of pensions and gratuities in Southern Rhodesia, to persons who have retired or shall retire from the public service of Southern Rhodesia, or whose offices in Southern Rhodesia have been or shall be abolished, shall be charged upon and paid out of the Consolidated Revenue Fund

58 Where under any proclamation or ordinance in force in the Colony any power, jurisdiction or authority is at the commencement of these our Letters Patent vested in the High Commissioner, such power, jurisdiction or authority shall be deemed to be transferred to and vested in the Governor in Council so far as the continuance thereof as a power, jurisdiction or authority so vested is not inconsistent with the law conferring the same or repugnant to these our Letters Patent

59 (1) Where, under any law of the Colony, any power, jurisdiction or authority is at the commencement of these our Letters Patent exercised by the Administrator, such power, jurisdiction or authority shall be exercised by the Governor in Council, and where, under any such law, any power, jurisdiction or authority has been conferred on any member of the existing Executive Council of Southern Rhodesia, such power, jurisdiction or authority shall be exercised by the Minister to whom it shall be assigned by the Governor in Council

(2) Where in any existing law the words "Legislative Council" occur, they shall, unless the context otherwise indicates, and save in so far as the law or any provision thereof deals with any matter mentioned in section 26 (2) of these our Letters Patent, be read as if they were "Legislative Council and Legislative Assembly"

60 The Governor may, by proclamation in the *Gazette*, at any time within one year from the date of the commencement of these our Letters Patent, and provided that our approval be previously signified to him through a Secretary of State, vary, annul, or add to any of the provisions of these our Letters Patent in order to carry out the purposes of the same, and may provide for any other matter necessary in order to carry into effect the provisions thereof

61. We do hereby reserve to ourselves, our heirs and successors, full power and authority from time to time to revoke, alter or amend sections 26, 28, 39-47, and 55 of these our Letters Patent as to us or them shall seem meet.

62. In these our Letters Patent, unless the contrary intention appears—

“Existing electoral laws” means such provisions of any proclamations issued by the High Commissioner and of any ordinance passed by the subsisting Legislative Council as, being in force at the date of the commencement of these our Letters Patent, shall regulate the qualification and disqualification of persons as voters or candidates for the subsisting Legislative Council, the constitution of electoral districts, the registration of voters, the preparation of lists of voters, the nomination of candidates, corrupt and illegal practices, the conduct of elections, the hearing of election petitions and all other matters connected with the election of members of the subsisting Legislative Council.

“Gazette” means the *Official Gazette of Southern Rhodesia*.

“Governor” means the Officer for the time being administering the Government of the Colony.

“Governor in Council” means the Governor acting by and with the advice of the Executive Council.

“High Commissioner” means our High Commissioner for the time being for South Africa.

“Month” means calendar month.

“Legislative Council” means any Legislative Council which may hereafter be constituted by any law passed in pursuance of section 2 of these our Letters Patent.

“President” means the member of such Legislative Council who shall be appointed or elected under the provisions of such law to preside at the meetings of the said Council.

“Speaker” includes Deputy Speaker.

“Secretary of State” means one of our Principal Secretaries of State.

“Board of Trustees” means the Board of Trustees established under section 41 of these our Letters Patent.

“Native” means any member of the aboriginal tribes or races of Africa or any person having the blood of such tribes or races and living among them and after the manner thereof.

63. (1) These our Letters Patent shall commence and come into operation on the 1st day of October, 1923, and shall be published in the *Gazette* and thereafter shall be proclaimed at such place or places within the Colony as the Governor shall think fit.

(2) All charters, Orders in Council, ordinances, proclamations and laws which at the date of the commencement of these our

Letters Patent are in force within the Colony shall, until duly repealed or varied, continue to be of the same force, authority and effect as if these our Letters Patent had not been made, except in so far as the same are repugnant to these our Letters Patent, in which case they are to that extent hereby amended and repealed

64 These our Letters Patent may be cited as 'The Southern Rhodesia Constitution Letters Patent, 1923'

In witness whereof we have caused these our Letters to be made Patent Witness ourself at Westminster this 1st day of September in the 14th year of our reign

By warrant under the King's Sign Manual,

SCHUSTER

\* \* \*

## 2 Letters Patent (Governor), 1923 (as amended 1926)

*Whereas by Letters Patent bearing even date herewith and entitled 'The Southern Rhodesia Constitution Letters Patent, 1923,'<sup>(1)</sup> provision has been made for the constitution of responsible government in our Colony of Southern Rhodesia*

*And whereas we are minded to make provision for the constitution of the office of Governor and Commander-in-Chief of our said Colony*

*Now know ye that we do declare our will and pleasure to be as follows —*

1 There shall be a Governor and Commander in Chief in and over our Colony of Southern Rhodesia, and appointments to the said office shall be made by Commission under our Sign Manual and Signet

2 We do hereby authorise, empower and command our said Governor and Commander-in-Chief (hereinafter called "the Governor") to do and execute all things that belong to the said office of Governor according to the tenor of these and any other our Letters Patent, having effect within the Colony, and of such Commission as may be issued to him under our Sign Manual and Signet, and according to such instructions as may from time to time be given to him under our Sign Manual and Signet or by our Order in our Privy Council, or by us through one of our Principal Secretaries of State, and to such laws as are now or shall hereafter be in force in the Colony

3 Every person appointed to fill the office of Governor shall, with all due solemnity, before entering on any duties of his office, cause the Commission appointing him to be Governor to be read and

published in the presence of the Senior Judge of the High Court or of some other judge of the said Court, and such of the members of the Executive Council of the Colony who can conveniently attend, which being done, he shall then and there take before them the oath of allegiance in the form provided by an Act passed in the session holden in the 31st and 32nd years of the reign of Her Majesty Queen Victoria intituled "An Act to amend the Law relating to Promissory Oaths" <sup>(1)</sup> and likewise the usual oath for the due execution of his office and for the due and impartial administration of justice, which oaths the said Senior Judge or judge is hereby required to administer.

4. There shall be a Public Seal of and for the Colony, which the Governor shall keep and use for sealing all things whatsoever that shall pass the said Public Seal. Provided that, until a Public Seal shall be provided, the private seal of the Governor may be used as the Public Seal of the Colony.

5. There shall be an Executive Council in and for the Colony, and the said Council shall consist of such persons being Ministers or other persons as the Governor shall, from time to time in our name and on our behalf, but subject to any law of the Colony, appoint under the Public Seal of the Colony to be members thereof. Subject to any such law the members of the Executive Council shall hold office during our pleasure; provided that the members of the Executive Council existing at the commencement of these our Letters Patent may, if the Governor thinks fit, continue to hold office until the appointment of Ministers.

6. The Governor may, in our name and on our behalf, make and execute under the Public Seal grants and dispositions of any lands within the Colony which may be lawfully granted or disposed of by us.

7. Subject to "The Southern Rhodesia Constitution Letters Patent, 1923," the Governor may constitute and appoint in our name and on our behalf all such officers in the Colony as may be lawfully constituted or appointed by us.

8. Subject to the said Letters Patent the Governor may, so far as we ourselves lawfully may, upon sufficient cause to him appearing, remove from his office, or suspend from the exercise of the same, any person holding any office or place within the Colony under or by virtue of any commission or warrant or other instrument granted, or which may be granted by us or in our name or under our authority, or by any other mode of appointment.

9. When any crime or offence has been committed within the Colony, or for which the offender may be tried therein, the Governor may, as he shall see occasion, in our name and on our behalf, grant

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(1) 31 & 32 Vict., c. 72.



a pardon to any accomplice in such crime or offence who shall give such information as shall lead to the conviction of the principal offender, or of any one of such offenders, if more than one, and further, may grant to any offender convicted of any such crime or offence in any court, or before any judge or magistrate, within the Colony, a pardon, either free or subject to lawful conditions, or any remission of the sentence passed on such offender, or any respite of the execution of such sentence, for such period as he may think fit, and may remit any fines, penalties, or forfeitures due or accrued to us. Provided always, that if the offender be a British subject, or a British subject by naturalisation in any part of our dominions, the Governor shall in no case, except where the offence has been of a political nature unaccompanied by any other grave crime, make it a condition of any pardon or remission of sentence that the offender shall be banished from or shall absent himself or be removed from the Colony.

10 In the event of the death, incapacity, removal or absence from the Colony of our said Governor, or of his being from any cause prevented from acting in the duties of his office, all and every the powers and authorities granted to him shall, until our further pleasure is signified therein, be vested in such person as we may appoint under our Sign Manual and Signet, and such person shall have and exercise all such powers and authorities until our further pleasure shall be signified. Provided that no such powers or authorities shall vest in such person until he shall have taken the oaths hereinbefore directed to be taken by the Governor of the Colony, and in the manner herein prescribed.

11 Whenever and so often as the Governor shall be temporarily absent from the Colony for the purpose of visiting, in the exercise or discharge of any powers or duties conferred or imposed upon him as Governor of Southern Rhodesia, our Union of South Africa or any other territory in Africa south of the equator belonging to us or under our protection or belonging to or under the protection of any foreign Power, for periods not exceeding *one month* at any one time nor exceeding in the aggregate 6 weeks in any one year, or for the purpose of recuperating his health at any place in our Union of South Africa or in any other such territory as aforesaid for periods not exceeding one month in any one year, then and in every such case the Governor may continue to exercise all and every the powers vested in him as fully as if he were residing within the Colony.

12 In the event of the Governor having occasion to be temporarily absent for a short period from the seat of government, or to be temporarily absent from the Colony for any purpose and for any period authorised by article 11 of these our Letters Patent, he may, in every such case, by an instrument under the Public Seal of the Colony, constitute and appoint any person to be his deputy within

the Colony, or any part thereof, during such temporary absence, and in that capacity to exercise, perform, and execute for and on behalf of the Governor during such absence, but no longer, all such powers and authorities vested in the Governor, as shall in and by such instrument be specified and limited, but no others. Every such deputy shall conform to and observe all such instructions as the Governor shall from time to time address to him for his guidance: provided nevertheless, that by the appointment of a deputy, as aforesaid, the power and authority of the Governor shall not be abridged, altered, or in any way affected, otherwise than we may at any time hereafter think proper to direct:

Provided further that, if any such deputy shall have been duly appointed, it shall not be necessary during the continuance in office of such deputy for any person to assume the government of the Colony as Administrator thereof.

13. And we do hereby require and command all our officers and Ministers, civil and military, and all other the inhabitants of the Colony, to be obedient, aiding and assisting unto the Governor, or to such person or persons as may from time to time under the provisions of these our Letters Patent administer the Government of the Colony.

14. In the construction of these our Letters Patent, the term "the Governor," unless inconsistent with the context, shall include every person for the time being administering the Government of the Colony.

15. And we do hereby reserve to ourselves, our heirs and successors, full power and authority from time to time to revoke, alter, or amend these our Letters Patent, as to us or them shall seem fit.

16. And we do direct and enjoin that these our Letters Patent shall commence and come into operation on the 1st day of October, 1923, and thereafter shall be read and proclaimed at such place or places within the Colony as the Governor shall think fit.

In witness whereof we have caused these our Letters to be made Patent.

Witness ourself at Westminster this 1st day of September, in the 14th year of our reign.

By warrant under the King's Sign Manual,

SCHUSTER.

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3. Royal Instructions, 1923 (as amended 1926 and 1937).

GEORGE R.I.

*Whereas by certain Letters Patent bearing even date herewith<sup>(1)</sup> we have constituted, ordered, and declared that there shall be a Governor*

and Commander in Chief (therein and hereinafter called "the Governor") in and over our Colony of Southern Rhodesia (therein and hereinafter called "the Colony")

And whereas we have by the said Letters Patent authorised, empowered, and commanded the Governor to do and execute all things that belong to his said office, according to the tenor of the said Letters Patent and any other our Letters Patent having effect within the Colony, and of such Commission as may be issued to him under our Sign Manual and Signet, and according to such instructions as may from time to time be given to him under our Sign Manual and Signet or by our Order in our Privy Council or by us through one of our Principal Secretaries of State, and to such laws as are now or shall hereafter be in force in the Colony

Now, therefore we do hereby direct and enjoin and declare our will and pleasure to be as follows —

1 In these our Instructions, unless inconsistent with the context, the term 'Governor' shall include every person for the time being administering the Government of the Colony

2-3 [Identical, *mutatis mutandis*, with the same parts of the Instructions in respect of New Zealand see page 131]

4 The Executive Council shall not proceed to the despatch of business unless duly summoned by authority of the Governor, nor unless two members at the least (exclusive of himself or of the member presiding) be present and assisting throughout the whole of the meetings at which any such business shall be despatched

5 The Governor shall attend and preside at the meetings of the Executive Council unless prevented by some necessary or reasonable cause and in his absence such member as may be appointed by him in that behalf or in the absence of such member the senior member of the Executive Council actually present shall preside The seniority of the members of the said Council shall be prescribed by the Governor

6 [Identical, *mutatis mutandis*, with clause 5 of the Instructions in respect of New Zealand see page 131]

7 The Governor shall not assent in our name to any law of any of the following classes —

(1) any law whereby any grant of land or money or other donation or gratuity may be made to himself,

(2) any law affecting the currency of the Colony,

(3) any law the provisions of which shall appear inconsistent with obligations imposed on us by treaty,

(4) any law of an extraordinary nature and importance whereby our prerogative or the rights and property of our subjects

not residing in the Colony, or the trade and shipping of the United Kingdom and its dependencies, may be prejudiced ;

(5) any law containing provisions to which our assent has been once refused, or which have been disallowed by us ; unless he shall have previously obtained our instructions upon such law through one of our Principal Secretaries of State, or unless such law shall contain a clause suspending the operation thereof until the signification in the Colony of our pleasure thereupon.

8. Whenever any offender shall have been condemned to suffer death by the sentence of any court, the Governor shall consult the Executive Council upon the case of such offender, submitting to the Council any report that may have been made by the judge who tried the case ; and whenever it appears advisable to do so, taking measures to invite the attendance of such judge at the Council. The Governor shall not pardon or reprieve any such offender unless it shall appear to him expedient so to do, upon receiving the advice of the Executive Council thereon ; but in all such cases he is to decide either to extend or to withhold a pardon or reprieve, according to his own deliberate judgment, whether the member of the Executive Council concur therein or otherwise ; entering nevertheless, on the minutes of the Executive Council, a minute of his reasons, at length, in case he should decide any such question in opposition to the judgment of the majority of the members thereof.

9. All commissions granted by the Governor to any persons to be officers in the Colony shall, unless otherwise provided by law, be granted during pleasure only.

10. Except in accordance with the provisions of any Letters Patent or of any Commission under our Sign Manual and Signet the Governor shall not, upon any pretence whatever, quit the Colony, without having first obtained leave from us for so doing under our Sign Manual and Signet, or through one of our Principal Secretaries of State. Provided nevertheless that, in the case of any temporary absence from the Colony in pursuance of article 11 of the above-recited Letters Patent, the Governor shall not, if he have previously informed the Executive Council in writing of his intended absence, and if he have duly appointed a deputy in accordance with the above-recited Letters Patent, be deemed to quit the Colony within the meaning of these our Instructions.

11. The Governor shall furnish to our High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland, such information relating to the native affairs of the Colony as, in the opinion of the Governor, may seem likely to be helpful to our said High Commissioner in the discharge of the duties of his office, and any further information in regard thereto which our said High Commissioner may request.

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## ADEN COLONY AND PROTECTORATE

- 1 Order in Council providing for the Government of the Colony —Balmoral September 26, 1936  
Text in *Statutory Rules and Orders* 1936 Vol I page 1
- 2 Royal Instructions to the Governor and Commander in Chief of the Colony —St James's March 3 1937
- 3 Order in Council providing for the Exercise of Jurisdiction in the Protectorate by the Governor and Commander in Chief of the Colony —London March 18 1937  
Text in *Statutory Rules and Orders* 1937, page 750
- 4 Royal Instructions to the Governor and Commander in Chief of the Protectorate —St James s, March 24, 1937

### I Colony Order in Council, 1936

*At the Court at Balmoral, the 26th day of September 1936*

*Present* THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL

*Whereas by section 288 of The Government of India Act 1935 (1) it is provided that on such date as His Majesty may by Order in Council appoint (in that section and in this Order referred to as the appointed day ) the then existing Chief Commissioner's Province of Aden shall cease to be a part of British India*

*And whereas by the said section His Majesty in Council is empowered to make such provision as he deems proper for the government after the appointed day of the territories theretofore comprised in the said Province*

*And whereas by sub section (5) of section 311 of the said Act it is provided amongst other things that any Act of Parliament containing reference to India or any part thereof shall have effect subject to such adaptations and modifications as His Majesty in Council may direct being adaptations and modifications which appear to His Majesty in Council to be necessary or expedient in consequence of the provisions of the Act*

*And whereas a draft of this Order has been laid before Parliament in accordance with the provisions of sub-section (1) of section 309 of "The Government of India Act, 1935," and an address has been presented to His Majesty by both Houses of Parliament praying that an Order may be made in the terms of this Order :*

*Now, therefore, His Majesty, in the exercise of the powers conferred on him as aforesaid and of all other powers enabling him in that behalf, is pleased, by and with the advice of his Privy Council, to order, and it is hereby ordered, as follows :—*

\* \* \*

3. The appointed day shall be the 1st day of April, 1937, and as from that day the following provisions of this Order shall have effect.

4. The Territory referred to in "The Government of India Act, 1935," as "the Chief Commissioner's Province of Aden" shall be known as "the Colony of Aden."

\* \* \*

11. There shall be an Executive Council in and for the Colony, and the said Council shall consist of such persons as His Majesty shall direct by Instructions under his Sign Manual and Signet, and all such persons shall hold their places in the said Council during His Majesty's pleasure, and subject thereto for such period and upon such conditions as may be specified in any such Instructions.

12. It shall be lawful for the Governor to make laws for the peace, order and good government of the Colony.

13. It shall be lawful for His Majesty to disallow any such law, and to signify such disallowance through the Secretary of State. Every law so disallowed shall cease to have effect from the time when the signification of such disallowance shall be published by the Governor by notice in the *Gazette*, but without prejudice to anything lawfully done or suffered thereunder.

14. His Majesty hereby reserves to himself, his heirs and successors power, with the advice of his or their Privy Council, from time to time to make laws for the peace, order and good government of the Colony.

15. (1) There shall be, in and for the Colony, a court of unlimited civil and criminal jurisdiction to be called "the Supreme Court."

(2) The constitution and powers of the Supreme Court may, subject to the provisions of this Order, be prescribed by laws enacted by the Governor under this Order.

(3) The District and Sessions Court as constituted immediately before the appointed day shall on that day become the Supreme

Court and, subject to the provisions of this section, all the jurisdiction and powers then vested in the District and Sessions Court shall become vested in the Supreme Court

(4) The person holding the office of District and Sessions Judge immediately before the appointed day shall, on that day, become Judge of the Supreme Court but shall hold office subject to the terms and conditions upon which he held office as District and Sessions Judge

16 Subject to the provisions of this Order, all Acts, orders ordinances regulations and other enactments having the force of law in the Province immediately before the appointed day shall, except so far as the same shall, in their application to the Colony, thereafter be repealed amended or otherwise affected by or under any Order of His Majesty in Council or any law made by the Governor under this Order, continue to have effect in the Colony, but shall be construed subject to such modifications as may be necessary to bring them into conformity with the provisions of this Order and of 'The Government of India Act, 1935'

17 Nothing in this Order shall affect the validity or future operation of any lawful act done by any authority in the Province before the appointed day

18 All proceedings commenced before the appointed day in any court of justice in or having jurisdiction in, the Province may be carried on in like manner, as nearly as may be, as if this Order had not been made and any such proceeding may be amended in such manner as may appear necessary and proper in order to bring it into conformity with the provisions of this Order and of "The Government of India Act, 1935"

19 Claims which if The Government of India Act, 1935 had not been passed, might have been enforced by or against the Secretary of State for India in Council in connection with the administration of the Province may be enforced in such manner as may be prescribed by the law of the Colony by or against the Government of the Colony

20 (1) An appeal shall lie from the Supreme Court to the High Court of Judicature at Bombay (in this section referred to as 'the High Court')—

(a) in civil cases—

(i) from any final judgment of the Supreme Court, where the appeal involves, directly or indirectly, some claim or question respecting property or some civil right, of the value of 5 000 rupees or upwards being a judgment from which, if it were a judgment of a District Court in the Province of Bombay, an appeal would lie to the High Court, under the Indian Code of Civil Procedure, 1908 as amended prior to the appointed day, and

(ii) with the leave of the Supreme Court or of the High Court, from any other judgment of the Supreme Court, whether final or interlocutory, if, by reason of the importance of the question involved in the appeal or otherwise, the Court is satisfied that leave to appeal ought to be granted ; and

(b) in criminal cases, from any judgment of the Supreme Court from which, if it were a judgment of a Court of Session in the Province of Bombay, an appeal would lie to the High Court under the Indian Code of Criminal Procedure, 1898, as amended prior to the appointed day :

Provided that no appeal shall lie where the sentence imposed is one of imprisonment not exceeding 6 months or of fine not exceeding 500 rupees or of both such imprisonment and fine.

(2) When any person is sentenced to death and no appeal has been lodged by him within the time limited for that purpose, the Supreme Court shall transmit the record of the case to the High Court and an appeal shall thereby be deemed to have been lodged by the said person ; and the sentence shall not be carried out unless and until it shall have been confirmed by the High Court.

(3) In civil matters an appeal may be brought to His Majesty in Council from a judgment of the High Court given in pursuance of this section in the following cases :—

(a) As of right, from any final judgment of the Court, where the appeal involves, directly or indirectly, some claim, or question respecting property or some civil right, of the value of 10,000 rupees or upwards and, if the judgment appealed from affirms the decision of the Supreme Court, the appeal involves some substantial question of law ; and

(b) At the discretion of the High Court, from any other judgment of the Court, whether final or interlocutory, if, in the opinion of the Court, the question involved in the appeal is one which, by reason of its great general or public importance or otherwise, ought to be submitted to His Majesty in Council for decision.

(4) Every judgment of the High Court given on appeal under this section, and every Order of His Majesty in Council made on appeal from any such judgment, may be enforced in the Colony in the same manner, as nearly as may be, as if it were a judgment of the Supreme Court.

(5) (a) The High Court shall, in relation to appeals under this section, have the like powers as are conferred upon it by the Indian Code of Civil Procedure, 1908, or the Indian Code of Criminal Procedure, 1898, as amended prior to the appointed day, in relation to appeals from a District Court or a Court of Session, as the case may be, in the Province of Bombay.



(6) The fees payable to the High Court in respect of appeals under this section shall be the fees prescribed from time to time in respect of similar appeals to the High Court from the said Courts in the Province of Bombay

(6) Notwithstanding anything in this section the Governor may, by law made under this Order, prescribe, or enable rules of court to be made prescribing the practice and procedure to be followed in relation to any appeals under this section including (without prejudice to the generality of the foregoing) the imposition upon rights of appeal of conditions as to the giving of security or otherwise

(7) Nothing in this section shall be taken to prejudice the right of His Majesty upon the humble petition of any person aggrieved by any judgment of the High Court, to admit his appeal therefrom upon such conditions as His Majesty in Council shall think fit to impose

(8) In this section, unless the context otherwise requires, the expression " judgment " includes any order or decree and a refusal to make any order

(9) Sections 6, 7, 8, 36, 37 and 38 of " The Aden Civil and Criminal Justice Regulation, 1933 " shall cease to have effect

21 No subject of His Majesty shall on grounds only of religion place of birth, descent, colour, or any of them be ineligible for office under the Crown in the Colony, or be prohibited on any such ground from entering the Colony or from acquiring, holding or disposing of property or carrying on any occupation, trade, business or profession in the Colony

\* \* \*

## 2 Royal Instructions, 1937

\* \* \*

4 (1) The Executive Council of the Colony shall consist of the officers lawfully discharging the functions of Political Secretary and Civil Secretary, who shall be styled "*ex officio* members," and such other persons as may from time to time be appointed by us by any Instructions or warrants under Our Sign Manual and Signet, or as the Governor may, by an instrument under the Public Seal of the Colony, appoint in pursuance of instructions from us through one of our Principal Secretaries of State, or as the Governor may provisionally appoint in the manner hereinafter provided

(2) Every such member of the Executive Council, not being an *ex officio* member or a member provisionally appointed, shall, subject to the provisions of section 11 of " The Aden Order, 1936,"<sup>(1)</sup> hold office for the term stated in the instrument appointing him,

or if no term is so stated, for a period of 3 years from the date of such instrument, but any member whose term of office shall have expired may be re-appointed.

(3) If any member of the Council holding public office in the Colony under the Crown shall cease so to hold office, his seat in the Council shall thereupon become vacant.

(4) Whenever upon any special occasion the Governor desires to obtain the advice of any person within the Colony relating to affairs therein, he may summon such person, for such special occasion, as an extraordinary member of the Council.

\* \* \*

### 3. Protectorate Order in Council, 1937.

*At the Court at Buckingham Palace, the 18th day of March, 1937.*

*Present:* THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

*Whereas by treaty, grant, usage, sufferance and other lawful means His Majesty has power and jurisdiction within the territories known as "the Protectorate of Aden":*

*And whereas it is expedient to make provision for the peace, order, and good government of the Protectorate of Aden:*

*Now, therefore, His Majesty, by virtue and in exercise of the powers by "The Foreign Jurisdiction Act, 1890,"<sup>(1)</sup> or otherwise in His Majesty vested, is pleased, by and with the advice of his Privy Council, to order, and it is hereby ordered, as follows:—*

\* \* \*

2. This Order shall apply to the territories of Arabia which are bounded on the south by the Colony of Aden and the Gulf of Aden, on the west and north by the Kingdom of the Yemen and the Kingdom of Saudi Arabia, and on the east by the Sultanate of Oman, and also to the islands of Socotra and Abdul Quri and any other islands adjacent to the said territories.

\* \* \*

4. The Governor and Commander-in-Chief of the Colony shall be the Governor and Commander-in-Chief of the Protectorate, and he is hereby empowered and commanded to exercise on His Majesty's behalf all such powers and jurisdiction as His Majesty now has, or may from time to time have, therein, and to that end to take or

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<sup>(1)</sup> *State Papers*, Vol. LXXXII, page 656.

cause to be taken all such measures and to do or cause to be done all such things therein as in the interest of His Majesty's service he may think expedient

\* \* \*

6 His Majesty hereby reserves to himself, his heirs and successors power, with the advice of his or their Privy Council, from time to time, to make laws for the peace, order and good government of the Protectorate

7 (1) Subject to the provisions of this Order, all Acts, orders, rules, regulations and other enactments having the force of law in the Protectorate on the appointed day shall, except so far as the same shall in their application to the Protectorate, thereafter be repealed amended or otherwise affected by or under any subsequent order, rule or other law, continue to have effect in the Protectorate, but shall be construed subject to such modifications as may be necessary to bring them into conformity with the provisions of this Order and of "The Aden Colony Order, 1936" <sup>(1)</sup>

(2) Without prejudice to any powers otherwise vested in him, the Governor is hereby empowered to make rules and orders for the following purposes —

(a) to modify the provisions of any Order of His Majesty in Council in force in the Protectorate on the appointed day, in order to bring such provisions into conformity with the provisions of this Order and of "The Aden Colony Order, 1936" ,

(b) to amend, add too, or repeal any other enactment to which sub section (1) of this section applies ,

(c) to apply in whole or in part, with such modifications (if any) as to him may seem necessary or expedient, any Act, order, rule, regulation or other enactment from time to time in force in the Colony, to persons in the Protectorate not being natives of the Protectorate ,

(d) to regulate or prohibit the entry into the Protectorate of persons not being natives of the Protectorate , and

(e) to secure the enforcement within the Protectorate of judgments, orders and decrees of the courts of the Colony

(3) For the avoidance of doubts it is hereby declared that all rules and orders made before the appointed day by the Governor-General of India in Council under "The Indian (Foreign Jurisdiction) Order in Council 1902" <sup>(2)</sup> have, in so far as at any time before the date of this Order they applied to the Protectorate and have not in such application been expressly repealed or revoked, continued in

<sup>(1)</sup> Page 368

<sup>(2)</sup> *State Papers*, Vol XCV, page 130

force in the Protectorate notwithstanding that the Protectorate has ceased to be a territory in which jurisdiction is exercised by or on behalf of His Majesty through the Governor-General of India in Council or some authority subordinate to him, and sub-section (1) of this section shall apply accordingly to such rules and orders.

\* \* \*

9. The Supreme Court of the Colony and all courts of the Colony inferior to the Supreme Court shall, subject to and in accordance with the provisions of any law in that behalf from time to time in force in the Colony, have jurisdiction in all matters arising in the Protectorate in which any person not being a native of the Protectorate is concerned, in the same manner and to the same extent as if such matters had arisen in the Colony.

\* \* \*



## BAHAMA ISLANDS

1. Letters Patent constituting the Office of Governor and Commander-in-Chief.—Westminster, September 8, 1909.

Text in *Statutory Rules and Orders*, 1909, page 781.

2. Royal Instructions to the Governor and Commander-in-Chief.—St. James's, September 8, 1909.

### *Amendment*

ADDITIONAL INSTRUCTIONS :

St. James's, April 7, 1937.

3. Act of the local Legislature to define the Qualifications of Electors and Members of the General Assembly.—September 9, 1919.

Text in *Statute Law of Bahama Islands*, Revised Edition, 1929,  
page 16.

. . . . .

- I. Letters Patent, 1909.

\* \* \*

6 The Governor may, with the advice and consent of the said Executive Council, from time to time, as need shall require, summon and call the General Assembly of the Islands in such manner and form as has been already appointed and used, or in such manner as may, from time to time, be prescribed by lawful authority.

\* \* \*

8 The Governor, by and with the advice and consent of the said Legislative Council and General Assembly, may make laws for the peace, order, and good government of the Islands provided that if any of the said laws shall at any time be disallowed by us, our heirs or successors, then such laws shall, from the date at which such disallowance shall be publicly signified by the Governor in the Islands, cease, determine, and become utterly void and of none effect

\* \* \*

## 2 Royal Instructions, 1909 (as amended 1937)

\* \* \*

2 The Executive Council for the Islands shall consist of our Lieutenant-Governor (if any) of the Islands, the persons for the time being holding the substantive appointments of Colonial Secretary, Attorney-General, and Receiver-General in the Islands, who shall be styled "*ex officio* members" of the said Council, of such persons as, at the date of the coming into force of our said Letters Patent, are members of the Executive Council, and such other persons (whether persons holding office under the Government of the Islands, hereinafter referred to as "official members," or persons not holding such office, hereinafter referred to as "unofficial members") as we may from time to time appoint by any instruction or warrant under our Sign Manual and Signet, or as the Governor in pursuance of any instructions from us through one of our Principal Secretaries of State may from time to time appoint by an instrument under the Public Seal of the Islands, or as the Governor may provisionally appoint, as hereinafter provided, but the total number of the members of the said Council shall not by any such provisional appointments be raised at any time to a greater number than nine

Every member, other than an *ex officio* member, of the said Executive Council appointed after the 30th day of April, 1907, shall vacate his seat at the end of 5 years from the date of the instrument by which, or in pursuance of which, he is appointed, but may from time to time be re-appointed by the Governor by an instrument under the Public Seal of the Islands for a further period not exceeding 5 years, subject to our approval conveyed through one of our Principal Secretaries of State

\* \* \*

14. The Legislative Council of the Islands shall consist of such persons as at the date of the taking effect of our said Letters Patent are members of the said Council, or as we may from time to time designate or name by any instruction or warrant under our Sign Manual and Signet, or as the Governor in pursuance of any instructions from us through one of our Principal Secretaries of State may from time to time appoint by an instrument under the Public Seal of the Islands, or as the Governor may provisionally appoint until our pleasure therein shall be known.

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### 3. General Assembly Elections Act, 1919

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2. Every male inhabitant of the Colony, except as hereinafter excepted, who hath attained the age of 21 years and hath been resident within the Colony 12 months preceding any election to be held for any district within the Colony, and is and hath been the *bona fide* owner in fee simple of any land of the actual value of £5 or upwards, or is and hath been a housekeeper occupying any house the value of the annual rental of which, if in any district on New Providence, is not less than £2 8s., or, if in any district on an out island, is not less than £1 4s., for the space of 6 months within any such district at the time of and preceding the said election, shall be, and every such person is hereby declared to be, competent to vote for any representative or representatives to serve as a member or members of the General Assembly of the Bahama Islands for the district wherein he is a freeholder or housekeeper as aforesaid: provided, that nothing herein contained shall prevent or be construed to prevent any person whose name stands on the register of voters now in force, who retains his qualification, and who shall be registered under any Act passed during the present session of the Legislature, from giving his vote at any election which shall be held for a member or members to serve in the General Assembly for the district for which he is registered as a freeholder or housekeeper.

3. No elector qualified under section 2 of this Act shall vote at the election of a member or members of the General Assembly for any particular district except in the polling division for which his name stands recorded.

4. No officer, non-commissioned officer or soldier, of or belonging to His Majesty's troops or forces stationed or in garrison within the Colony, nor any barrack-master, storekeeper or other civil officer, or person there employed by or acting in any commissariat department, or in or under the ordnance at any ordnance establishment there, nor any other person whatsoever, actually borne upon the strength of any such garrison, within the Colony, or there serving under the

command of any officer, having commission from His Majesty, shall be competent to vote as a housekeeper at any election hereafter to be holden within the Colony for any representative or representatives to serve as a member or members of the General Assembly for any district within the same provided, that nothing herein contained shall extend or be construed to extend to prevent any such officer, non commissioned officer or soldier, barrack-master, storekeeper or other civil officer or person, or other person, as aforesaid, who shall otherwise be duly qualified to vote at any such election, for, or in respect of any freehold within the Colony, from voting as a freeholder accordingly

5 No person or persons whatsoever except natural-born British subjects or aliens duly naturalised by Act of the Imperial Parliament or by Act of the Legislature, shall have any right to vote at the election of any member or members to serve in the General Assembly

6 (1) No elector shall vote, or offer to vote, for more than one freehold house or tenement, nor shall more than one person vote for the same freehold, house or tenement within any district where an election for a member or members of the General Assembly shall be held nor shall any person or persons, by reason or colour of being a tenant or tenants of any apartment, cellar, store, office or outhouse, appertaining to or being a part or appendage of a dwelling house or other tenement, presume to vote at any election within any district where the same shall or may be held

\* \* \*

42 (1) No person, except as hereinafter excepted, shall be capable of being elected or serving as a member of the General Assembly, unless being a male inhabitant and a natural born British subject or alien duly naturalised by Act of the Imperial Parliament or by Act of the Legislature, of the age of 21 years or upwards, and who shall have been in the Colony 12 months provided, that no person claiming to be a British subject and born without the Colony who shall offer himself for election at any election held under this Act shall be capable of being elected or serving as a member aforesaid unless he shall produce before the close of the poll at such election to the person holding the same a duly and properly authenticated certificate of his birth, or, in any case where such certificate cannot be produced, satisfactory evidence of his status as a British subject

(2) Any person holding any of the offices set out in the second schedule to this Act shall not be capable of being elected or serving or sitting or voting as a member of the General Assembly

43 No person, except as hereinafter excepted, who shall be elected a member of the General Assembly for any district within

the Colony shall sit or vote as a member of the House of Assembly who shall not have an estate, real and personal, or real or personal property only, for his own life, or for some greater estate, either in law or in equity, to and for his own use and benefit, over and above what will satisfy and clear all judgments, mortgages or other legal incumbrances that may affect the same of the value of £200.

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## SECOND SCHEDULE.

Persons disqualified for election to membership of the General Assembly :—

Circuit Justice.

Commissioner.

Officers and teachers of the Board of Education.

Sanitary Inspector.

Stipendiary and Circuit Magistrate.

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## BARBADOS

1. Letters Patent constituting the Office of Governor and Commander-in-Chief and providing for the Government.—Westminster, June 4, 1914.

Text in *Statutory Rules and Orders*, 1914, Vol. III, page 359.

### *Amendment*

LETTERS PATENT :

Westminster, February 22, 1937 .. Text in *Statutory Rules and Orders*, 1937, page 2379.

2. Royal Instructions to the Governor and Commander-in-Chief.—St. James's, June 4, 1914.

### *Amendment*

ADDITIONAL INSTRUCTIONS :

St. James's, February 22, 1937.

3. Act of the local Legislature to consolidate the Acts relating to the Representation of the People.—May 23, 1901.

Text in *Barbados Laws*, Revised Edition, 1912, Vol. II, page 494.



*Amendments*

## ACTS

March 4, 1915

1918-24, page 235

November 18 1937

Text in *Barbados Laws* 1912-18 to

## 1 Letters Patent, 1914 (as amended 1937)

\* \* \*

10 The Governor, by and with the advice and consent of the Legislative Council and General Assembly of the Island, may make all such laws as may from time to time be required for the peace, order, and good government of the Island

The Governor shall have a negative voice in the making and passing of all such laws

\* \* \*

## 2 Royal Instructions, 1914 (as amended 1937)

\* \* \*

2 The Executive Council of the Island shall consist of the following members, that is to say the officers for the time being lawfully discharging the functions of Colonial Secretary and of Attorney General, who shall be styled "*ex officio* members," and such other persons as we may from time to time appoint by warrant under our Sign Manual and Signet, or as the Governor, in pursuance of any instructions from us, through one of our Principal Secretaries of State, may from time to time appoint under the Public Seal of the Island

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13 The Legislative Council of the Island, unless otherwise provided by law, shall consist of such persons as we may from time to time appoint by warrant under our Sign Manual and Signet, or as the Governor, in pursuance of any instructions from us, through one of our Principal Secretaries of State, may from time to time appoint under the Public Seal of the Island

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### 3. Representation of the People Act, 1901 (as amended 1915 and 1937).

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2. Every male subject of His Majesty, his heirs and successors (not being a clerk in holy orders or other minister of religion or any individual the functions of whose office are of a judicial nature), of 21 years of age and upward who shall possess any one of the qualifications below, shall be qualified to be elected a member of the Assembly of this Island, namely :—

(1) 30 acres of land in fee simple or fee tail with a dwelling-house thereon, which dwelling-house shall be of not less value than the sum of £300 ;

(2) ownership in fee simple or fee tail of lands, houses, or any real estate whatsoever, of the absolute value of £1,500 ;

(3) tenant for life or who, or whose wife shall have and be beneficially interested for life or for any greater estate either in law or equity in any lands, tenements, or hereditaments of not less than the annual value of £120, whether such lands, tenements, or hereditaments be in the occupation of such person or rented or leased out ; provided the rent received be not less than £120 and that the renting or leasing be a *bona fide* renting or leasing, and the person claiming to be qualified in respect thereof or his wife be entitled to such rent for his or her own use and benefit ;

(4) who, or whose wife shall be in the receipt of a clear annual income of not less than £200 being the rents, issues, or proceeds of any messuages, lands, or hereditaments, or derivable from any pension, profession, office or trade, or from dividends in the public funds or stocks of Great Britain, or from interest on any loans advanced to the Government of this Island, or from interest of money secured by mortgage or other specialty in this Island over real estate exceeding the value of the money secured thereon, or from dividends or other annual income derivable from shares of any company incorporated by Act of this Island.

3. Every man a subject of His Majesty, his heirs and successors, of full age and not subject to any legal incapacity, who shall possess either of the qualifications hereinafter mentioned, shall be entitled to be registered as a voter, and when registered to vote at any election for any two candidates to serve in the General Assembly of this Island for the parish or city of Bridgetown, in respect of which he may be registered as a voter, and in which his qualification may be situated, namely :

(1) who is seised at law or in equity of any land or tenements of freehold for his own life or for the life of another, or for any lives

whatsoever, or in right of marriage, or as a dower of his wife, or for any larger estate, of the yearly value of not less than £5, and who in his own right or in right of his wife shall have been in the actual possession thereof or in the receipt of the rents and profits thereof for his use for 12 months at least next previous to his claim to be registered, and the deed or deeds under which such lands or such estate or interest shall be claimed shall have been proved and recorded 3 months in the Registration Office, unless possession of the same or receipt of the rents and the profits thereof shall have been had or taken by him for 2 years next previous to his claim to be registered,

(2) who in his own right or in right of his wife shall be entitled for his or her life to rents and profits issuing out of any lands or tenements in this Island to the amount of £5 per annum and upwards, and who shall have been in the receipt of such rents and profits for his use 12 months at least next previous to his claim to be registered, and the deed or deeds under which such rents and profits shall be claimed shall have been proved and recorded 3 months in the Registration Office, unless the said rents and profits shall have been had or taken by him for 2 years next previous to his claim to be registered,

(3) who is the occupier of any land or of any house, warehouse, store, counting-house, shop or other building or buildings being either separately or jointly occupied with any land which is parochially assessed at the value of £15 per annum, or is of that value, and who for 6 months next previous to his claim to be registered shall have been in the occupation of any such lands, house, warehouse, store, counting house, shop or other building or buildings,

(4) who shall have paid taxes assessed by the vestry of the parish of Saint Michael in respect of the city of Bridgetown of not less than £2, or shall have paid taxes assessed by the vestry of any of the other parishes, or by the vestry of the parish of Saint Michael in respect of the rural part of that parish, of not less than £1 for the year next previous to his claim to be registered, exclusive of the year in which he registered, and who shall have paid all such taxes as shall be due and payable by him at the time he claims to be registered, provided that no person claiming to vote under this subsection shall be entitled to vote at any election who shall be in arrear for any such taxes,

(5) who shall be employed at the time he claims to be registered by any private person, and shall have been continuously so employed for 12 months next previous thereto, as an agricultural attorney, manager, bookkeeper or clerk or in the capacity of an agent or upper servant, or in any other capacity except that of a domestic or other menial servant, at a salary of not less than £4 3s 4d per month, and shall have resided for 6 months next previous to his

claim to be registered and shall be then residing in the parish, or city of Bridgetown, for which he claims to be registered ; and no person so registered as a voter under this sub-section shall be entitled to vote at any election for any parish or town unless he shall be *bona fide* so employed therein at the time of such election ;

(6) Who shall have a clear income at the rate of not less than £50 per annum at the time he claims to be registered, and shall have had the same for 12 consecutive months next previous thereto, derivable from any pension, occupation, office, or trade, other than that of domestic or menial servant or any employment of the like or of a menial nature, and who shall have resided for 6 months next previous to the time he claims to be registered and shall be then residing in the parish, or city of Bridgetown, for which he so claims to be registered ; and no person so registered as a voter under this sub-section shall be entitled to vote at any election for any parish or town unless he shall be *bona fide* so residing therein at the time of such election ;

(7) who shall be in the actual receipt of a clear income at the time he claims to be registered, and shall have had the same for one year next previous thereto, of not less than £15 per annum, charged on real estate in this Island or derived as interest from money or capital secured by mortgage or other security over real estate in this Island, or being dividends derived from debentures or shares of any company incorporated by Act of this Island, and who shall have resided for 6 months next previous to the time he claims to be registered and shall be then residing in the parish, or city of Bridgetown, for which he so claims to be registered ;

(8) who is recognised as a barrister, solicitor, physician or surgeon, or who holds the degree of B.A., M.A., or any other degree of any university of the United Kingdom of Great Britain and Ireland, or a *testamur* from Codrington College, and who shall have resided for 6 months next previous to the time he claims to be registered and shall be then residing in the parish, or the city of Bridgetown, for which he so claims to be registered ; and no person so registered as a voter under this sub-section shall be entitled to vote at any election for any parish or town unless he shall be *bona fide* so residing therein at the time of such election ;

(9) who shall be a *bona fide* lodger in any house in any parish, or in the city of Bridgetown, for which he claims to vote, rated at not less than £50 per annum and shall as such lodger pay a stipulated sum of not less than at the rate of £15 per annum, and who shall have been continuously an occupant in any house as such lodger for at least 6 months next previous to his claim to be registered and shall be at the time of election occupying as aforesaid ;

and no person shall be entitled to vote in the election of a member or members to serve in the House of Assembly unless he

shall possess one of the qualifications above mentioned, and unless he shall be registered according to the provisions hereinafter contained, provided always that when any lands or tenements or the rents and profits thereof which would otherwise confer the right of voting shall come to any person at any time within the said period of 12 months mentioned in sub-sections (1) and (2) by descent, succession marriage, marriage settlement, devise or promotion to any benefice in a church or by promotion to any office, such persons shall be entitled in respect thereof to have his name inserted as a voter in the election of a member or members to serve in the Assembly in the list then next to be made by virtue of this Act as hereinafter mentioned, and upon being duly registered according to the provisions hereinafter contained to vote at such election

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59 No General Assembly of this Island shall be or continue in force for more than two years at any one time, to be computed from their first meeting as an Assembly

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## BASUTOLAND

1. Order in Council providing for the Administration — February 2, 1884      Text in *State Papers* Vol LXXV, page 424
2. Order in Council transferring to His Majesty's High Commissioner for Basutoland, Bechuanaland Protectorate and Swaziland the Powers vested in His Majesty's High Commissioner for South Africa — London, December 20, 1934      Text in *Statutory Rules and Orders*, 1934 Vol II, page 758

## I. Order in Council, 1884.

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## PART II

Her Majesty is further pleased to order, and it is hereby ordered as follows.

So soon as part II of this Order takes effect, Basutoland shall again come under the direct authority of Her Majesty, and the person for the time being exercising the functions of Her Majesty's High Commissioner for South Africa (hereinafter styled "the High Commissioner") shall have and may exercise, in the name and on behalf of Her Majesty, all legislative and executive authority in and over the territory of Basutoland.

The High Commissioner is hereby empowered and required, in the name and on behalf of Her Majesty, to make by proclamation such laws as may to him appear necessary for the peace, order, and good government of the said territory, and to appoint such Resident or Deputy or Assistant Commissioners, officers and magistrates, and generally to take such measures, and to do all such matters and things as he may think expedient for the like peace, order, and good government.

All laws in force in Basutoland at the time when this Order takes effect shall continue in operation until repealed or altered by proclamation of the High Commissioner, and all powers and authorities which by such laws are vested in the Governor and officers appointed by him shall be vested in and exercisable by the High Commissioner and officers appointed by him.

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## BECHUANALAND PROTECTORATE

1. Order in Council providing for the Exercise of Jurisdiction.—Windsor, May 9, 1891.

Text in *State Papers*, Vol. LXXXIII, page 809.

*Amendments*

## ORDERS IN COUNCIL :

Osborne, July 30, 1891 . . . . . Text in *State Papers*,  
Vol. LXXXIII, page 812.

London, October 18, 1909 . . . . . Text in *Statutory Rules*  
and *Orders*, 1909, page 331.

- 2 Order in Council transferring to His Majesty's High Commissioner for Basutoland, Bechuanaland Protectorate and Swaziland the Powers vested in His Majesty's High Commissioner for South Africa —London, December 20, 1934      Text in *Statutory Rules and Orders*, 1934, Vol I, page 593

# 1 Order in Council, 1891 (as amended 1891 and 1909)

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2 The High Commissioner may on Her Majesty's behalf exercise all powers and jurisdiction which Her Majesty, at any time before or after the date of this Order, had or may have within the limits of this Order, and to that end may take or cause to be taken all such measures and may do or cause to be done all such matters and things within the limits of this Order as are lawful, and as in the interest of Her Majesty's service he may think expedient, subject to such instructions as he may from time to time receive from Her Majesty or through a Secretary of State

3 The High Commissioner may appoint so many fit persons as in the interest of Her Majesty's service he may think necessary to be Deputy Commissioners, or Resident Commissioners, or Assistant Commissioners or judges magistrates or other officers, and may define from time to time the districts within which such officers shall respectively discharge their functions

Every such officer may exercise such powers and authorities as the High Commissioner may assign to him, subject nevertheless to such directions and instructions as the High Commissioner may from time to time think fit to give him. The appointment of such officers shall not abridge alter, or affect the right of the High Commissioner to execute and discharge all the powers and authorities hereby conferred upon him

The High Commissioner may remove any officer so appointed

4 In the exercise of the powers and authorities hereby conferred upon him, the High Commissioner may, amongst other things, from time to time by proclamation provide for the administration of justice, the raising of revenue, and generally for the peace, order, and good government of all persons within the limits of this Order, including the prohibition and punishment of acts tending to disturb the public peace

The High Commissioner in issuing such proclamations shall respect any native laws or customs by which the civil relations of any native Chiefs tribes, or populations under Her Majesty's protection are now regulated, except so far as the same may be incompatible with the due exercise of Her Majesty's power and jurisdiction

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6. Her Majesty may disallow any such proclamation wholly or in part, and may signify such disallowance through a Secretary of State, and upon such disallowance being publicly notified by the High Commissioner in the *Gazette* the provisions so disallowed shall, from and after a date to be mentioned in such notification, cease to have effect, but without prejudice to anything theretofore lawfully done thereunder.

7. The courts of British Bechuanaland shall have in respect of matters occurring within the limits of this Order the same jurisdiction, civil and criminal, original and appellate, as they respectively possess from time to time in respect of matters occurring within British Bechuanaland, and the judgments, decrees, orders, and sentences of any such court made or given in the exercise of the jurisdiction hereby conferred may be enforced and executed, and appeals therefrom may be had and prosecuted in the same way as if the judgment, decree, order, or sentence had been made or given under the ordinary jurisdiction of the court.

But the jurisdiction hereby conferred shall only be exercised by such courts, and in such manner and to such extent, as the Governor of British Bechuanaland shall by proclamation from time to time direct.

8. Subject to any proclamation made under this Order, any jurisdiction exercisable otherwise than under this Order, whether by virtue of any statute or Order in Council, or of any treaty, or otherwise, and whether exercisable by Her Majesty, or by any person on her behalf, or by any colonial or other court, or under any commission, or under any charter granted by Her Majesty, shall remain in full force.

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## BERMUDA

1. Letters Patent constituting the Office of Governor and Commander-in-Chief.—Westminster, January 19, 1888.

Text in *Statutory Rules and Orders* revised to December 31, 1903,  
Vol. I, Bermudas, page 1.



2 Royal Instructions to the Governor and Commander-in-Chief —St James's, November 25, 1915

*Amendment*

ADDITIONAL INSTRUCTIONS

June 9, 1930

3 Act of the local Legislature to consolidate and amend the Acts relating to Parliamentary Elections — May 3, 1928

Text in *Bermuda Laws*, 1690-1930, Vol II page 956

*Amendment*

ACT

April 12, 1933

Text in *Bermuda Laws*, 1933 page 53

1 Letters Patent, 1888

\* \* \*

6 Instead of our Council for our said Islands, there shall be henceforth two Councils for our said Islands, namely, an Executive Council and a Legislative Council Each of the said Councils shall consist of such persons as we shall direct by any Instructions under our Sign Manual and Signet, and all such persons shall hold their places in the said Council during our pleasure

7 The Executive Council shall possess and may exercise all powers, duties, and authorities of an executive or administrative character heretofore vested in or exercised by the Council of our said Islands The said Executive Council shall also possess and may exercise such powers, duties and authorities as we may assign to it by our Letters Patent or by Instructions under our Sign Manual and Signet

8 The Legislative Council shall possess and may exercise all powers, duties, and authorities other than those of an administrative or executive character, heretofore vested in or exercised by the Council of our said Islands, except so far as the said powers, duties, and authorities are or shall be assigned to the said Executive Council by our Letters Patent, or by any Instructions under our Sign Manual and Signet

9 The Governor may, with the advice and consent of our said Executive Council, from time to time, as need shall require, *summon* and call the General Assembly of our said Islands, in such manner and form as has been already appointed and used, or in such manner as may from time to time be prescribed by lawful authority

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## 2. Royal Instructions, 1915 (as amended 1930).

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2. The Executive Council of our said Islands shall consist of the person for the time being lawfully discharging the functions of Colonial Secretary, the combatant military officer for the time being next in seniority within our said Islands after the Governor or Officer administering the Government of our said Islands, the persons for the time being lawfully discharging the functions of Attorney-General and Receiver-General, and of such other persons as are at the date of receipt of these our Instructions by the Governor members of the said Council, or as we may from time to time appoint by any instruction or warrant under our Sign Manual and Signet, or as the Governor, in pursuance of instructions from us, through one of our Principal Secretaries of State, may from time to time appoint under the Public Seal of our said Islands.

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12. The Legislative Council of our said Islands shall consist of the persons for the time being lawfully discharging the functions of Chief Justice, Colonial Secretary, and Receiver-General, and of such persons as are at the date of the receipt of these our Instructions by the Governor members of the said Council or as we may from time to time appoint by any instruction or warrant under our Sign Manual and Signet, or as the Governor in pursuance of any instruction from us through one of our Principal Secretaries of State may from time to time appoint by any instrument under the Public Seal of our said Islands.

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## 3. Parliamentary Election Act, 1928 (as amended 1933).

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2. (1) Every House of Assembly that shall, at any time after the dissolution of the present House, be assembled in these Islands under the authority of His Majesty, his heirs or successors, shall continue for a period of 5 years and no longer, to be reckoned from the day on which any such House shall be appointed first to assemble and meet, after any general election.

(2) Nothing herein contained shall be deemed or construed to abridge or alter the royal prerogative of His Majesty, his heirs or successors, or the power of any Governor to dissolve the House of Assembly at any time.

(3) Nothing herein contained shall be deemed or construed to repeal or alter ' The Demise of the Crown Act, 1761," so far as the same is now in force

3 At every general election for the election of members of the House of Assembly there shall be chosen four representatives for each of the nine parishes in these Islands

4 No person not a native of these Islands, or not holding office under the Crown, shall be chosen or elected to serve or be eligible to a seat in the House of Assembly, unless he has resided or continued in these Islands 5 years

5 No person not a male of the age of 21 years or over, and not registered in his own right, or in right of his wife, or as receiving the rents and profits to his own use of a freehold in some parish in these Islands, rated at the last parish assessment at not less than £240, shall be capable of being elected to serve as a member in the House of Assembly

6 No person not a male of the age of 21 years or over, and not registered in his own right, or in right of his wife, or as receiving the rents and profits to his own use, of a freehold in the parish to be represented rated at the last parish assessment at not less than £60 shall be capable of voting in the election of a member of the House of Assembly

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## BRITISH GUIANA

1. Act of the Imperial Parliament to make Provision for the Government —March 28, 1928

Text in *State Papers*, Vol CXXVIII, page 46

- 2 Order in Council providing for the Government and for the Constitution of a Legislative Council —London, July 13, 1928

Text in *State Papers*, Vol CXXVIII page 58

### *Amendment*

#### ORDER IN COUNCIL

London, August 13 1935

*Orders*, 1935 page 189

Text in *Statutory Rules and*

3. Letters Patent constituting the Office of Governor and Commander-in-Chief.—Westminster, July 20, 1928.

Text in *Statutory Rules and Orders*, 1928, page 1385.

4. Royal Instructions to the Governor and Commander-in-Chief.—St. James's, July 20, 1928.

.. .. .

# I. Act of Parliament, 1928.

[18 Geo. V, c. 5—March 28, 1928]

\* \* \*

1. (1) It shall be lawful for His Majesty in Council to create and constitute, in substitution for the existing Legislature, a Legislature for the Colony of British Guiana in such form and with such powers as His Majesty in Council may determine, and from time to time to alter and amend the constitution of the Legislature and any powers thereof; and any such Order in Council may provide that, notwithstanding the powers conferred on the Legislature thereby, there shall be reserved to or conferred on His Majesty full power by Order in Council from time to time to make laws for the peace, order and good government of the Colony of British Guiana.

(2) Before any such Order in Council creating and constituting such Legislature or altering the constitution or powers thereof is made, a draft thereof shall be laid before each House of Parliament for a period of not less than 21 days on which that House has sat, and if either House of Parliament before the expiration of that period presents an address to His Majesty against the Order or any part thereof, no further proceedings shall be taken on the draft, without prejudice to the making of a new draft Order.

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## 2. Constitution Order in Council, 1928 (as amended 1935).

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3. From a date to be fixed by the Governor in Executive Council by proclamation in the *Gazette* the Court of Policy and the Combined Court of the Colony now subsisting and all and every the functions and privileges of those two bodies respectively shall cease and determine absolutely, and in place of the said Court of Policy and Combined Court there shall be in and for the Colony a Legislative Council, which shall be constituted and have such powers as is hereinafter provided.

4 The Council shall consist of the Governor as President, of ten official members and of nineteen unofficial members

5 The official members of the Council shall be the persons for the time being lawfully discharging the functions of the respective offices of Colonial Secretary and Attorney General of the Colony (hereinafter referred to as "*ex officio* members") and such other persons holding public office in the Colony under the Crown not exceeding eight in number at any one time (hereinafter referred to as "nominated official members") as may be appointed in the manner hereinafter provided

6 The unofficial members of the Council shall be such persons not holding public office in the Colony under the Crown not exceeding five in number at any one time (hereinafter referred to as "nominated unofficial members") as may be appointed in the manner hereinafter provided, and fourteen persons to be elected as hereinafter provided (hereinafter referred to as "elected members")

7 The nominated members of the Council shall be appointed by instructions or warrant under His Majesty's Sign Manual and Signet, or by the Governor by an instrument under the Public Seal of the Colony in pursuance of His Majesty's instructions through a Secretary of State, or temporarily or provisionally by the Governor in pursuance of the power hereinafter vested in him

8 The nominated members of the Council shall hold their seats on the Council during His Majesty's pleasure and in any case shall vacate their seats at the next dissolution of the Council after their appointment, unless previously removed by virtue of instructions or warrant or warrants under His Majesty's Sign Manual and Signet or through a Secretary of State, but may be reappointed by the Governor by an instrument under the Public Seal of the Colony, subject to His Majesty's approval signified through a Secretary of State

Provided that if any nominated official member of the Council ceases to hold public office in the Colony under the Crown, his seat in the Council shall thereupon become vacant

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21 No person shall be qualified to be elected a member of the Council or, having been elected, to sit or vote in Council who—

(i) is not of the male sex, and

(ii) is not entitled to vote at an election of a member of the Council, or

(iii) is a minister of religion, or

(iv) is the holder of an office of emolument under the Crown or under the Government of the Colony,

and who does not possess in the Colony one of the following qualifications, namely:—

(a) Receipt of a clear annual income of not less than 2,400 dollars, or

(b) Possession in his own right of immovable property of the value of not less than 5,000 dollars over and above the amount of any mortgage, or

(c) Ownership, under a lease for 21 years or upwards, of any house or house and land the annual rental whereof is not less than 1,200 dollars.

Provided that where any land or immovable property is jointly owned by more persons than one as joint owners or where any house or house and land is or are jointly owned, under a lease for 21 years or upwards, by more persons than one as joint owners, each of such joint owners shall be deemed to have the property qualification for an elected member of the Council in case the value of such land or immovable property or the annual rental of such house or house and land is such as when divided by the number of such owners gives a qualification for each of such owners, but not otherwise.

The term "minister of religion" in this article and in article 23 of this Order means any clergyman, minister, priest, or other person who exercises spiritual functions or performs the offices of religion for or in respect to any Christian or other church, community, or body within the Colony.

The term "office of emolument" in this article and in article 23 of this Order does not include a pension or other allowance to an officer who has ceased to be in the service of the Crown or under the Government of the Colony.

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25. Subject to the provisions hereinafter contained, every person shall be entitled to be registered as a voter in any one electoral district, and when registered, to vote at the election of a member or members of the Council for such district who is qualified as follows:—

(a) has attained the age of 21 years ;

(b) is under no legal incapacity ;

(c) is a British subject by birth or naturalisation ;

and possesses within the electoral district in which he claims to be registered one or more of the following qualifications, namely:—

(i) Ownership, during the 6 months previous to registration, of not less than 6 acres of land ; or

(ii) Occupation or tenancy, during the 6 months previous to registration, of not less than 6 acres of land secured by lease or some document in writing for 3 years or upwards, such lease or document to be recorded or deposited in the Deeds Registry or in the Department of Lands and Mines ;

(iii) Ownership, during the 6 months previous to registration, of a house or land, or land with a house or other erections thereon, of the value of not less than 350 dollars ; or

(iv) Occupation or tenancy during the 6 months previous to registration, of a house or land, or land with a house or other erections thereon, of the annual rental of not less than 96 dollars, secured by lease or any document in writing for one year or upwards deposited or recorded in the Deeds Registry or in the Department of Lands and Mines,

(v) Possession or enjoyment of an annual income or salary which (together with any sum paid or allowed to him or on his behalf for board or lodging or board and lodging) amounts to not less than 300 dollars, coupled with residence in the district, such possession or enjoyment and residence having subsisted during the 6 months previous to registration, or

(vi) Payment, during the 12 months previous to registration, of direct taxes to the colonial revenue of 20 dollars or upwards, coupled with residence in the district during the 6 months previous to registration provided that no licence duty of any kind shall be deemed to be within the meaning of the term "direct taxes"

Provided that where any land, or house, or house and land or house and land or appurtenances in any electoral district is or are jointly owned or occupied by more persons than one as owners or tenants, each of such joint owners or tenants shall be entitled to be registered as a voter for such electoral district in respect of such land or house, or house and land, or house and land or appurtenances, in case the value of such land, or house, or house and land, or house and land or appurtenances, is such as when divided by the number of such owners or tenants gives a qualification for each and every such owner or tenant, but not otherwise

26 No person shall be entitled to be registered as a voter if he—

(i) Cannot read and write some language, provided always that any person who knows how to read and write, but is incapacitated by blindness or other physical cause from reading or writing shall not be disqualified from being a voter, or

(ii) Has within the 12 months previous to registration received any relief from public funds or funds of any local authority, or

(iii) Has been sentenced in any part of His Majesty's dominions to death, or penal servitude, or imprisonment with hard labour, or for any term exceeding 12 months, and has not either suffered the punishment to which he was sentenced or such other punishment as by competent authority may have been substituted, or received a free pardon from His Majesty

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54 It shall be lawful for the Governor, with the advice and consent of the Council, subject always to any conditions, provisos, and limitations prescribed by any Order in Council or by any Instructions under His Majesty's Sign Manual and Signet, to make laws for the peace, order and good government of the Colony

Provided nevertheless, and it is hereby reserved to His Majesty, his heirs and successors, his and their undoubted right and authority to confirm, disallow, or with the advice of his or their Privy Council to revoke or amend any such laws, and to make, enact, and establish, from time to time, with the advice of his or their Privy Council, all such laws as may to him or them appear necessary for the peace, order and good government of the Colony.

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62. Any matter requiring a vote or enactment of the Council may be decided by the Governor in Executive Council notwithstanding that such decision may be contrary to the vote of a majority of the Legislative Council; provided that the Governor shall by writing under his hand declare such decision to be in his opinion necessary in the interests of public order, public faith, or other first essentials of good government, including the responsibilities of the Colony as a component part of the British Empire. Where any matter as aforesaid has been decided by the Governor in Executive Council under this article, such decision shall be deemed to be the decision and determination of the Legislative Council and shall be so construed. Provided, however, that effect shall not be given to any such decision until the Governor shall have reported fully to the Secretary of State all the circumstances of every case in which he shall make any such declaration of opinion and the approval of a Secretary of State first obtained, save in cases of urgency where in the opinion of the Governor in Executive Council delay would be contrary to the public interests, in which cases such decision shall nevertheless be subject to review by a Secretary of State after considering the report of the Governor; and provided further that the Governor shall forward to the Secretary of State any statements or representations which any member or members of the Legislative Council may desire to make on the matter if made within 14 days of the making of such declaration of opinion.

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#### 4. Royal Instructions, 1928.

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2. The Executive Council of the Colony shall consist of the persons for the time being lawfully discharging the functions of the respective offices of Colonial Secretary, and Attorney-General of the Colony, who shall be styled "*ex officio* members" of the said Council, and, until the first meeting of the Legislative Council of the Colony to be established in accordance with the said "British Guiana (Constitution) Order in Council, 1928,"<sup>(1)</sup> of such persons as at

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(1) Page 391.



the date of the coming into force of our said Letters Patent are members of the Executive Council, and thereafter of such persons holding office in the public service of the Colony and being members of the said Legislative Council, not exceeding four in number at any one time, as the Governor, in pursuance of instructions from us through one of our Principal Secretaries of State, may from time to time appoint by instrument under the Public Seal of the Colony, who shall be styled "official members" of the Executive Council and further of such persons not holding office in the public service of the Colony but who are members of the said Legislative Council, not exceeding five in number at any one time, as the Governor, in pursuance of instructions from us, through one of our Principal Secretaries of State, may from time to time appoint by instrument under the Public Seal of the Colony, who shall be styled "unofficial members" of the Executive Council, and of such persons as may be provisionally appointed by the Governor as hereinafter provided

Every person so appointed by the Governor in pursuance of instructions from us through one of our Principal Secretaries of State or provisionally appointed by the Governor shall vacate his seat in the Executive Council if at any time he shall cease to be a member of the Legislative Council from any cause other than a dissolution of the said Council, or if he shall with the permission of the Governor, by writing under his hand addressed to the Governor, resign his seat in the Executive Council, or if, being an official member of the Executive Council, he shall cease to hold office in the public service of the Colony, or if he shall leave the Colony without written permission from the Governor or outstay any leave of absence granted him by the Governor or by one of our Principal Secretaries of State. He shall in any case vacate his seat in the Executive Council at the first meeting of the Legislative Council held after the next dissolution of the said Council after his appointment to be a member of the Executive Council, but may be reappointed if he possesses the necessary qualifications as aforesaid

Whenever upon any special occasion the Governor desires to obtain the advice of any person within the Colony touching our affairs therein he may, by an instrument under the Public Seal of the Colony, summon for such special occasion any such person as an extraordinary member of the Executive Council

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## BRITISH HONDURAS

1. Letters Patent constituting the Office of Governor and Commander-in-Chief.—Westminster, July 20, 1909.

Text in *Statutory Rules and Orders*, 1909, page 785.

*Amendment*

LETTERS PATENT :

Westminster, January 31, 1927.

2. Royal Instructions to the Governor and Commander-in-Chief.—St. James's, July 20, 1909.

*Amendment*

ADDITIONAL INSTRUCTIONS :

St. James's, January 3, 1936.

3. Ordinance of the local Legislature to provide for the Constitution and Legislative Council.—July 17, 1935.

Text in *Ordinances of British Honduras*, 1935, page 57.

*Amendment*

ORDINANCE :

July 25, 1935      .. Text in *Ordinances of British Honduras*,  
1935, page 129.

4. Ordinance of the local Legislature to provide for the Qualifications and Election of certain Members of the Legislative Council and for the Registration of Voters.—July 17, 1935.

Text in *Ordinances of British Honduras*, 1935, page 65.

*Amendments*

ORDINANCES :

July 25, 1935      .. Text in *Ordinances of British Honduras*,  
1935, page 131.

April 17, 1937.

..      ..      ..

2. Royal Instructions, 1909 (as amended 1936).

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3. (1) The Executive Council of the Colony shall consist of the persons for the time being lawfully discharging the functions of Colonial Secretary, Attorney-General and Senior Medical Officer, who shall be styled "*ex officio* members" of the Executive Council, and such other persons as may from time to time be appointed by us by any instructions or warrants under our Sign Manual and Signet, or as the Governor may, by an instrument under the Public

Seal of the Colony, appoint in pursuance of instructions from us through one of our Principal Secretaries of State, or as the Governor may provisionally appoint in the manner hereinafter provided

*Provided that if any member of the Council holding public office in the Colony under the Crown shall cease so to do, his seat in the Council shall thereupon become vacant*

(2) Every member of the Executive Council, not being an *ex officio* member or a member provisionally appointed shall, subject to the provisions of article 8 of the Letters Patent of the 20th day of July, 1909,<sup>(1)</sup> constituting the office of the Governor and Commander-in-Chief in and over the Colony, hold office for the term stated in the instrument appointing him or if no term is so stated, for a period of 3 years from the date of such instrument, but any member whose term of office shall have expired may be re appointed

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14 (1) Until we shall otherwise order, the Legislative Council shall be constituted in the manner provided in "The British Honduras Constitution Ordinance, 1935"<sup>(2)</sup>, and the official members of the Legislative Council of the Colony shall be the persons for the time being lawfully discharging the functions of Colonial Secretary, Attorney General and Senior Medical Officer, and two other persons holding public office in the Colony under the Crown appointed in the manner specified in the said ordinance

*Provided that if any official member of the Council shall cease to hold public office in the Colony under the Crown, his seat in the Council shall thereupon become vacant*

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### 3 Constitution Ordinance, 1935 (as amended)

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2 There shall be in and for the Colony a Legislative Council constituted as hereinafter provided

3 It shall be lawful for the Governor, with the advice and consent of the said Legislative Council, to make laws for the peace, order, and good government of the said Colony

4 From a date<sup>(3)</sup> to be fixed by the Governor in Executive Council by proclamation in the *Gazette* the Legislative Council of the Colony now subsisting and all and every the functions and privileges of that body shall cease and determine absolutely, and in place of the said Legislative Council there shall be in and for the Colony a Legislative Council, which shall be constituted and have such powers as is hereinafter provided

<sup>(1)</sup> *Statutory Rules and Orders* 1909 page 785

<sup>(2)</sup> *Infra*

<sup>(3)</sup> January 1, 1936

5. It shall be lawful for His Majesty the King, from time to time by Instructions under his Sign Manual and Signet to determine the constitution of the Council ; and for His Majesty by such Instructions or by warrants under his Sign Manual and Signet or the Governor by instrument under the public seal of the Colony in pursuance of His Majesty's instructions through one of his principal Secretaries of State to designate by office or appoint by name such officers and appoint such persons as he may think fit to be respectively the official and nominated unofficial members of the Council for which provision is made for the time being.

6. (1) Unless and until otherwise provided by such instructions as aforesaid, the Council shall consist of the following members :—

(a) the Governor as president ;

(b) five official members being the persons holding public offices in the Colony under the Crown and designated or appointed under the preceding section ;

(c) seven unofficial members of whom two (hereinafter referred to as "nominated members") shall be appointed under the preceding section and five elected ;

(2) The elected members shall be persons qualified and elected in the manner provided by any law in force in the Colony providing for the qualification and election of such members.

7. (1) The Governor may, by an instrument under the Seal of the Colony, appoint one or more persons to act provisionally as official or nominated member or members as the case may require, in case at any time the number of official or nominated members present in the Colony, and capable of acting in the discharge of their duties, shall be less than the number of official or nominated members provided for by or under this ordinance.

(2) The Council shall be deemed to be properly constituted and competent to transact business notwithstanding the existence of any vacancy among the members thereof whether caused by the failure of any division to elect a representative or howsoever arising.

(3) Every provisional appointment may be disallowed by His Majesty through one of his principal Secretaries of State, or may be revoked by the Governor by such instrument as aforesaid, provided that such disallowance or revocation shall take effect only as from the date of such disallowance or revocation. And any such appointment, or where there are two or more such appointments of the same class, the last in date of such appointments, shall, *ipso facto*, expire whenever by its continuance the number of official or nominated members as the case may be present in the Colony, and capable of acting in the discharge of their duties, would be raised above the number of official or nominated members provided for by or under this ordinance.

15 All questions brought before the Council shall be decided by the majority of the votes given, and the Governor or presiding member shall have an original vote in all such questions, and also a casting vote if the votes shall be equally divided

Provided that if the Governor shall consider it necessary—

(i) in the interests of public order, public faith, or other essentials of good government, including the responsibilities of the Colony as a component part of the British Empire, or

(ii) to secure (within the scope of the bill, motion, resolution or vote concerned) detailed control of the finances of the Colony during such time as, by virtue of receipt of financial assistance by the Colony from His Majesty's Exchequer for the purpose of balancing the annual budget or otherwise, such control rests with His Majesty's Government that any bill, motion, resolution or vote proposed for the decision of the Council should have effect then if the Council fails to pass such bill, motion, resolution or vote within such time as he may think reasonable and expedient, the Governor at any time within his discretion may, notwithstanding any provisions to the contrary declare that any such bill, motion, resolution or vote shall have effect and thereupon the same shall have effect as if it had been passed by the Council, and in the case of any such bill the Governor may, subject to any Instructions under the Royal Sign Manual and Signet, assent thereto in the name of and on behalf of His Majesty and sign the same in token of such assent In making any such declaration the Governor shall inform the Council of his reasons therefor

The Governor shall forthwith report to one of His Majesty's Principal Secretaries of State every case in which he shall make any such declaration, and the reasons therefor

If any member of the Council objects to any such declaration, he may within 7 days of the making thereof submit to the Governor a statement in writing of his reasons for so objecting, and a copy of *such statement shall be appended to the report of the Governor* required by this section

Any such motion, resolution or vote may be revoked by His Majesty through one of His Majesty's Principal Secretaries of State and the Governor shall notify such revocation to the Council and from the date of such notification any such motion, resolution or vote so revoked shall cease to have effect, but without prejudice to anything lawfully done thereunder

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19 (a) The Governor may reserve any bill passed by the Council for the signification of His Majesty's pleasure thereon, and shall so reserve any such bill by which any provision of this ordinance or of "The Electoral Qualifications and Regulations Ordinance, 1935,"<sup>(1)</sup>

is repealed, altered, or amended, or which is in any way repugnant to or inconsistent with any of the provisions of this ordinance or of the said ordinance.

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#### 4. Electoral Qualifications and Regulations Ordinance, 1935 (as amended 1935 and 1937).

\* \* \*

3. No person shall be eligible for election as a member of the Council, or, having been elected, shall sit or vote in the Council, who :—

(1) is the holder of any office of emolument under the Crown, or under a municipal corporation within the Colony, unless in the latter case he shall have previously obtained the written consent of the Governor ;

(2) is a returning officer of the division for which the election is held ;

(3) is not a British subject ;

(4) is not, in the opinion of the Governor, sufficiently acquainted with the English language, both oral and written, to be able to follow the proceedings in Council without difficulty ;

(5) is not entitled to vote at the election of a member of the Council for some electoral division ;

(6) has not ordinarily resided in the Colony for 3 years immediately preceding the election, or is not domiciled in the Colony and ordinarily resident therein at the date of the election ;

(7) does not possess a clear annual income of \$1,000 ; or is not the owner of real property situate within the Colony of the value of at least \$500 above all charges and encumbrances affecting the same ;

(8) has been dismissed from the service of the Crown ;

(9) has been disqualified from practising as a legal or medical practitioner by the order of any competent authority.

The term " office of emolument " in this section does not include a pension or other allowance to an officer who has ceased to be in the service of the Crown or of a municipal corporation, and does not include the holding of a general retainer by a solicitor.

\* \* \*

6 Every person shall be entitled to be registered as a voter, for any one electoral division, and, when registered, to vote at the election of a member of the Council, who is qualified as follows that is to say —

(1) If a male has attained the age of 21 years, if a female has attained the age of 30 years,

(2) Is under no legal incapacity,

(3) Is a British subject,

(4) Is not an undischarged bankrupt,

(5) Has ordinarily resided in the Colony for 12 months at least previous to the date of registration, or is domiciled in the Colony and is ordinarily resident therein at the date of such registration and in either case possesses one of the following qualifications —

(a) Has an income of at least \$300 per annum,

(b) Is the owner of real property situate within the Colony of the value of at least \$500 above all charges and encumbrances affecting the same,

(c) Is paying rent in respect of real property situate within the Colony at the rate of at least \$96 per annum

Provided that no person shall be registered as a voter or be entitled to vote for the election of a member of the Council who —

(1) Has been convicted of perjury in any court in His Majesty's dominions and sentenced to punishment therefor or been sentenced by any such court to death, or penal servitude, or imprisonment with hard labour or for a term exceeding 12 months, and has not either suffered the punishment to which he was sentenced or such other punishment as by competent authority may have been substituted for the same or received a free pardon from His Majesty, or

(2) Has within 12 calendar months immediately preceding the 1st day of January in any year in which a register of voters is prepared received any relief from public or municipal funds

Provided further that no person shall be registered as a voter unless he shall with his own hand have subscribed his name to his claim to be registered and written thereon the date of such subscription

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## CEYLON

1. Order in Council providing for the Constitution of a State Council.—London, March 20, 1931.

Text in Parliamentary Paper *Cmd.* 3862.

*Amendments*

ORDERS IN COUNCIL :

London, March 22, 1934 . . . . Text in *Statutory Rules and Orders*, 1934, Vol. II, page 759.

London, May 4, 1935 . . . . Text in *Statutory Rules and Orders*, 1935, page 1786.

London, November 23, 1937 . . Text in *Statutory Rules and Orders*, 1937, page 2380.

2. Order in Council providing for the Election of Members to serve in the State Council.—London, March 20, 1931.

Text in Parliamentary Paper *Cmd.* 3862.

*Amendments*

ORDERS IN COUNCIL :

London, March 22, 1934 . . . . Text in *Statutory Rules and Orders*, 1934, Vol. II, page 761.

London, August 13, 1935 . . . . Text in *Statutory Rules and Orders*, 1935, page 1787.

London, December 20, 1935 . . Text in *Statutory Rules and Orders*, 1935, page 1791.

3. Letters Patent constituting the Office of Governor and Commander-in-Chief.—Westminster, April 22, 1931.

Text in Parliamentary Paper *Cmd.* 3862.

4. Royal Instructions to the Governor and Commander-in-Chief.—St. James's, April 22, 1931.

Text in Parliamentary Paper *Cmd.* 3862.

. . . . .

- i. State Council Order in Council, 1931 (as amended 1934, 1935 and 1937).

*At the Court at Buckingham Palace, the 20th day of March, 1931.*

*Present :—THE KING'S MOST EXCELLENT MAJESTY  
IN COUNCIL.*

*Whereas by " The Ceylon (Legislative Council) Order in Council,*



1923,"<sup>(1)</sup> His Majesty, by and with the advice of his Privy Council, was pleased to make provision for the constitution of a Legislative Council for the Island of Ceylon, with the territories and dependencies thereof

And whereas the said Order in Council was amended by "The Ceylon (Legislative Council) Amendment Order in Council, 1924,"<sup>(2)</sup> and by "The Ceylon (Legislative Council) Amendment Order in Council, 1928,"<sup>(3)</sup> and by "The Ceylon (Legislative Council) Amendment Order in Council, 1929,"<sup>(4)</sup> and by "The Ceylon (Legislative Council) Amendment Order in Council, 1930"<sup>(5)</sup> (all the said Orders in Council being hereinafter referred to as "The Orders in Council of 1923 to 1930")

And whereas in each of the said Orders in Council His Majesty reserved to himself, his heirs, and successors, power, with the advice of his or their Privy Council, to revoke, alter, or amend the same as to him or them should seem fit

And whereas a Legislative Council has been duly constituted in accordance with the provisions of the Orders in Council of 1923 to 1930

And whereas it is expedient to revoke the said Orders in Council and to make provision for the constitution of a State Council for the Island in lieu of the said Legislative Council, and for the exercise of executive functions by the members thereof

And whereas His Majesty has power, by and with the advice of his Privy Council, to pass laws in and for the Island

Now, therefore, it is hereby ordered by His Majesty, by and with the advice of his Privy Council, as follows —

### *Preliminary*

1 This Order may be cited as "The Ceylon (State Council) Order in Council, 1931" It shall be published in the *Government Gazette*, and shall come into operation upon a date<sup>(6)</sup> to be declared by the Governor by proclamation in the *Government Gazette*

2 Nothing in this Order shall extend to the Maldive Islands

3 The Orders in Council of 1923 to 1930 are hereby revoked, but such revocation shall not prejudice anything lawfully done thereunder, or affect or prevent a prosecution for an offence committed before the commencement of this Order, and notwithstanding such revocation, the Legislative Council now subsisting constituted under the said Orders in Council shall, until it is dissolved, continue to exist and to possess and exercise all the privileges, powers, and

(1) *Statutory Rules and Orders* 1923, page 1035

(2) *Ibid.*, 1924, page 1881

(3) *Ibid.* 1928, page 1390

(4) *Ibid.*, 1929 page 1441

(5) *Ibid.*, 1930, page 1980

(6) April 15, 1931

functions conferred upon it by those Orders, and the Governor shall dissolve the said Council at such time, not later than 6 months after this Order shall come into operation, as he shall think fit.

4. (1) In this Order, unless the context otherwise requires :—

“ British subject ” means any person who is a British subject under the provisions of “ The British Nationality and Status of Aliens Acts, 1914—<sup>(1)</sup>—1922,”<sup>(2)</sup> any person who has been naturalised under any enactment of a British possession, and any person who is a British protected person, as hereinafter defined.

“ British protected person ” means any person who is a native of the territories of any native Prince or Chief under the suzerainty of His Majesty exercised through the Governor-General of India or through any Governor or other officer subordinate to the Governor-General of India and is resident in Ceylon.

“ Member ” means a member of the State Council.

“ Person ” or “ persons ” includes both sexes.

“ Persons holding public office under the Crown in the Island ” and cognate expressions shall not include—

(a) Persons who are not in the permanent employment of the Crown in the Island, but shall include persons serving the Crown in the Island for a term of years ;

(b) The Speaker, Deputy Speaker, Deputy Chairman of Committees, and Ministers ;

(c) Any officer or soldier of a defence force formed under “ The Defence Force Ordinance, 1910,” or under any ordinance amending or repealing that ordinance ;

(d) Persons in the employment of municipal councils, district councils, the Board of Improvement of Nuwara Eliya, local boards, sanitary boards, and boards of health, village committees, and provincial and district committees constituted under any law of the Island relating to local government, education, or the management of roads, canals, or rivers ;

(e) Crown Proctors ;

(f) Crown Advocates not being Crown Counsel.

“ Register ” or “ register of voters ” means the register of voters for any particular electoral district.

“ The Council ” means the State Council constituted under this Order.

“ The Secretary of State ” means one of His Majesty’s Principal Secretaries of State.

(2) In the construction of this Order any reference to the head of any Government department shall be taken to refer to the officer

(<sup>1</sup>) *State Papers*, Vol. CVIII, page 8.

(<sup>2</sup>) *Ibid.*, Vol. CXVI, page 201.

designated by the Governor by notice in the *Government Gazette* to be the head of that department, and in connection with the administration of any subject or the exercise of any function with which *Government Agents* are concerned all the provisions of this Order which apply to heads of departments shall apply to *Government Agents*

(3) In the construction of this Order the provisions of "The Interpretation Ordinance, 1901," shall, subject to the express provisions of this Order, and notwithstanding any provision to the contrary in such ordinance, apply as if this Order were an ordinance of the Legislative Council of the Island, or of the State Council as hereby constituted

### *Constitution of the State Council*

5 Upon the dissolution of the Legislative Council at present subsisting and constituted under the Orders in Council of 1923 to 1930 there shall be substituted in place thereof a State Council constituted as hereinafter provided

6 There shall be three Secretaries to the Government of the Island namely, a Chief Secretary, a Legal Secretary and a Financial Secretary, who shall be appointed by the Governor with the approval of the Secretary of State, provided that until the Governor shall appoint a person to be Legal Secretary all the provisions of this Order which refer to the office of Legal Secretary, or to the person for the time being lawfully exercising the functions of that office, shall be deemed to apply to the office of Attorney-General, or to the person for the time being lawfully exercising the functions of that office, as the case may require

7 The Council shall consist of the following persons.—

(a) The three persons for the time being lawfully exercising the functions of the respective offices of Chief Secretary, Legal Secretary, and Financial Secretary. Such persons shall be styled "Officers of State" and shall be to all intents and purposes members of the Council having all the rights and privileges of membership save that they shall not vote upon any question before the Council. All references in this Order to the Chief Secretary, Legal Secretary or Financial Secretary shall include the persons for the time being lawfully exercising the functions of those offices respectively

(b) Fifty persons who shall be elected in accordance with the law for the time being in force relating to the election of members of the Council. Such persons are herein referred to as "elected members"

(c) Not more than eight persons who shall be appointed in the manner hereinafter provided and are herein referred to as "nominated members"

*Qualification for Membership of the Council*

8. Every person not disqualified under the next succeeding article shall be qualified for election or appointment as a member if he is qualified to be registered as a voter in any electoral district and is actually so registered in any such district ; provided that a person shall not be disqualified for election or appointment as a member by reason only of the fact that he is not actually registered as a voter if he shall have been prevented from being so registered solely by delay in the revision of a register after the date by which the same should have been revised in accordance with the law for the time being in force, or by absence from the Island during the whole of the last preceding period within which application for registration as a voter might have been made in accordance with such law.

9. No person shall be capable of being elected or appointed as a member or of sitting or voting in the Council as an elected or nominated member who—

(a) is not a British subject ; or

(b) is unable to speak, read, and write the English language ;

or

(c) holds any public office under the Crown in the Island ; or

(d) directly or indirectly, himself or by any other person whatsoever in trust for him or for his use or benefit or on his account holds or enjoys, in the whole or in part, any contract or agreement or commission made or entered into with or accepted from any person for or on account of the public service ; provided that nothing herein contained shall extend to any pension or gratuity granted from the public revenue or other funds of the Island in respect of past public service, nor to any contract, agreement or commission entered into or accepted by any incorporated trading company in its corporate capacity, nor to any company consisting of more than ten persons, when such contract, agreement or commission shall be made, entered into or accepted for the general benefit of such incorporation or company ; or

(e) is an uncertificated or undischarged bankrupt or insolvent ;

or

(f) is serving a sentence of penal servitude or imprisonment imposed by any court in any part of His Majesty's dominions or in any country under His Majesty's protection or in respect of which a mandate is being exercised by the Government of any part of His Majesty's dominions, for an offence punishable with hard labour or rigorous imprisonment for a term exceeding 12 months ; or is under sentence of death imposed by any such court, or is serving any term of imprisonment awarded in lieu of execution of such sentence ; or

(g) has been adjudged by a competent court to be of unsound mind ; or

(h) is incapable of being registered as a voter or of being elected as a member by reason of his conviction of a corrupt or illegal practice or by reason of the report of an election judge in accordance with the law for the time being in force relating to the election of members of the Council, or

(i) would have been incapable of being elected as a member of the Legislative Council established under the Orders in Council of 1923 to 1930 by reason of his conviction for a corrupt or illegal practice under those Orders, if those Orders had not been revoked

10 Except for the purpose of electing the Speaker of the Council, no member of the Council shall sit or vote therein until he shall have taken and subscribed before the Council the oath of allegiance in the form given in this article or shall have made and subscribed before the Council an affirmation in the corresponding form

#### FORM OF OATH

I *A B* do swear that I will be faithful and bear true allegiance to His Majesty King George V, his heirs and successors according to law So help me God

11 (1) A person shall be liable to a penalty of 500 rupees for every day on which he shall sit or vote in the Council knowing or having reasonable grounds for knowing that he is disqualified by this Order for so sitting or voting or that his seat has become vacant

(2) The penalty imposed by this article shall be recoverable in the District Court of Colombo by any person who shall sue for the same provided that no person shall bring an action for the recovery of any such penalty without first obtaining leave from the District Judge of the Court who shall have full discretion to grant or refuse such leave and whose decision in the exercise of such discretion shall be final

#### *Nominated Members*

12 The nominated members of the Council shall be appointed by the Governor by an instrument under the Public Seal of the Island in pursuance of His Majesty's instructions through the Secretary of State or provisionally subject to the conditions hereinafter prescribed

13 A nominated member whose seat shall have become vacant may be reappointed by the Governor in manner aforesaid

14 (1) When there shall be a vacancy in the number of seats in the Council allotted for nominated members, any person appointed to be a nominated member to fill such vacancy shall, unless appointed in pursuance of instructions from His Majesty communicated to the Governor through the Secretary of State be appointed provisionally

(2) Every provisional appointment shall without delay be reported to His Majesty through the Secretary of State and may be

disallowed or confirmed by His Majesty through the Secretary of State.

(3) Every person so provisionally appointed shall be to all intents and purposes a member of the Council unless and until his appointment shall be disallowed and notice of such disallowance shall be published in the *Government Gazette*, and if his appointment shall be confirmed by His Majesty notice of such confirmation shall be published in the *Government Gazette* and thereupon the appointment of such member shall cease to be provisional and shall thenceforth be in all respects as though it had been made in pursuance of instructions from His Majesty.

### *Vacation of Seats in the Council*

15. The seat in the Council of an elected or nominated member shall become vacant—

(a) upon his death ; or

(b) if by writing under his hand addressed to the Governor he shall resign his seat in the Council ; or

(c) if he shall become incapable of sitting or voting as a member by reason of any of the provisions of article 9 ; or

(d) if he shall become the citizen or subject of any foreign State or Power or shall make any declaration or acknowledgment of allegiance to any foreign State or Power ; or

(e) if his election shall be vacated or made void by reason of the commission of any corrupt or illegal practice or by reason of the declaration, certificate or report of an election judge ; or

(f) if, without the leave of the Council first obtained, he shall be absent from the sittings of the Council for a continuous period of 3 months ; or

(g) if, in the case of a person provisionally appointed to be a nominated member, his appointment shall be disallowed by His Majesty and notice of such disallowance shall be published in the *Government Gazette* ; or

(h) upon the dissolution of the Council.

### *Precedence among Members*

16. (1) Subject to the provisions of clause (5) of this article, the Officers of State shall take precedence of the other members, and shall rank among themselves in the order in which their offices are hereinbefore mentioned.

(2) The Speaker of the Council shall take precedence next after the Officers of State.

(3) Members who are Ministers shall take precedence next after the Speaker and among themselves the first in order of precedence shall be the Minister elected by the Board of Ministers to be the Vice-

Chairman thereof and the other Ministers shall rank after him in the order of the date of their appointment as Ministers, and two or more Ministers appointed on the same day shall rank in the alphabetical order of their names provided that a Minister reappointed as a Minister, whether to the same office or to another, shall except in regard to the Vice-Chairman of the Board of Ministers, take precedence according to the date from which he shall have held office as a Minister without an interruption of more than one month

(4) The Deputy Speaker shall rank next after the Ministers, and the Deputy Chairman of Committees shall rank next after the Deputy Speaker

(5) At any meeting of the Council the Speaker, when presiding, or in his absence the Deputy Speaker or other presiding member, shall have precedence over all other members of the Council

### *Powers and Procedure of the State Council*

#### GENERAL

17 (1) The Council shall meet in session at such time, not being later than one month after the completion of every general election, as the Governor shall appoint by proclamation in the *Government Gazette*

(2) The Council shall remain in session from the time when it shall meet after every general election until it shall be dissolved, provided that the Council may adjourn from time to time in accordance with the standing orders of the Council, and provided further that the Governor may at any time summon a meeting of the Council by proclamation in the *Government Gazette*

18 The Governor may at any time by proclamation in the *Government Gazette* dissolve the Council

19 Unless the Council shall have been previously dissolved under article 18 or article 69 of this Order, the Governor shall dissolve the Council by proclamation in the *Government Gazette* on such date, either upon or after the expiration of 4 years from the completion of the last preceding general election as shall seem to him to be most convenient to enable the polling of votes at the ensuing general election to take place in or about the month of January. The date upon which the Council may be dissolved under this article shall not be earlier than the expiration of 4 years nor later than the expiration of 5 years, from the completion of the last preceding general election

20 The Governor shall have the right of addressing the Council and may for that purpose require the attendance of its members

21 Subject to the provisions of articles 22, 26, 46, and 80, all questions proposed for decision in the Council shall be determined by

a majority of the votes given on such questions, provided that the Speaker or other presiding member shall not vote unless the votes of the other members shall be equally divided ; in such case he shall give the casting vote.

22. (1) If the Governor shall consider that it is necessary in the interests of public order, public faith, or other essentials of good government, or to give effect to any of the provisions of this Order, that provision should be made by legislation, then in such case, notwithstanding any of the provisions of this Order or of any standing orders made under this Order, he may, by message to the State Council addressed to the Clerk of the State Council at the State Council Chamber, explain the circumstances which in his opinion render legislation necessary, and either—

(a) enact forthwith, as a Governor's ordinance, a bill containing such provisions as he may consider necessary ; or

(b) attach to his message a draft of the bill which he considers necessary.

(2) [Governor's message to Council.]

(3) Where the Governor takes such action as in mentioned in paragraph (b) of the preceding clause, he may at any time after a period of one month reckoned from the date upon which he signed the message, enact, as a Governor's ordinance, the bill proposed by him to the State Council either in the form of the draft attached to the message or with such amendments as he deems necessary, but before doing so he shall consider any address which may have been presented to him within the said period by the State Council with reference to the bill or to amendments suggested to be made therein.

(4) Any Governor's ordinance shall be expressed to be enacted by the Governor and upon being signed by him, shall be of the same force and effect as if it had been passed by the Council and had received the Governor's assent and shall be subject to disallowance by His Majesty in the same manner ; and all the provisions of this Order which relate to bills passed by the Council, or to the assent of the Governor to such bills, shall apply to bills enacted by the Governor in accordance with this article, or to the signing of such bills by him, as the case may require.

(5) [Governor's message to have priority.]

23. (1) The Governor shall report to the Secretary of State every case in which he shall have occasion to enact a Governor's ordinance under the powers conferred by the preceding article, and shall state in such report the reasons for the enactment of the ordinance.

(2) [Objecting members may submit statements.]

(3) The Governor shall append to his report under this article a copy of any statement of objections submitted to him in accordance with the provisions of the preceding clause, and, in a case where a Governor's ordinance has been enacted under the powers conferred



by clause (3) of the preceding article, a copy of any address of the nature referred to in that clause presented to him by the State Council.

24 The Council shall not be disqualified for the transaction of business by reason of any vacancy or vacancies among the Officers of State or among the nominated or elected members

25 No business, except that of adjournment or the reading of a message from the Governor under article 22, shall be transacted unless there shall be present at least twenty members, exclusive of the Officers of State, in addition to the Speaker or other presiding member

26 (1) Subject to the provisions of this Order, standing orders may be made for the regulation of the business and procedure of the Council, the preservation of order at meetings of the Council, prescribing the terms and conditions upon which any remuneration or allowance payable to members by reason of their membership of the Council may be paid and for all other purposes authorised or required by this Order

(2) The first standing orders of the Council shall be made by the Governor, with the approval of the Secretary of State, but may be amended, rescinded, or supplemented by the Council, provided that no amendment or rescission of, and no addition to the standing orders shall have effect unless the same shall be passed by a two-thirds majority of all the members of the Council excluding the Officers of State and the Speaker or other presiding member

27 (1) The Governor shall appoint a person to be the Clerk of the Council and such other persons to perform such duties as officers of the Council as he shall think fit, and may at any time revoke any such appointment

(2) The power conferred upon the Governor by this article shall include a power to appoint a person to perform temporarily the duties of the Clerk or of any other officer of the Council whenever in the Governor's opinion circumstances shall so require, and to revoke any such temporary appointment at any time

(3) In the exercise of the powers conferred upon him by this article the Governor shall consult the Speaker, or the member presiding in the Council for the time being in the place of the Speaker, provided that, prior to the first election of a Speaker under this Order, or in the interval between a dissolution of the Council and the next subsequent election of a Speaker, the Governor may make any such appointment as aforesaid provisionally and may thereafter confirm or revoke the same after consultation with the Speaker, provided, also, that the Governor may, subject to such conditions as he shall prescribe, delegate to the Speaker, or other presiding member, all or any of the powers conferred upon him by this article

28. Before the commencement of every meeting of the Council, a statement of all business to be brought before the Council at that meeting shall be communicated by the Clerk of the Council to each member and to the Governor, and the Clerk shall also transmit to the Governor a copy of every document, other than petitions, presented to the Council.

29. Minutes shall be regularly kept of all the proceedings of the Council and copies of the said minutes shall be transmitted by the Clerk of the Council to the Governor as soon as possible after each meeting of the Council and the Governor shall transmit a copy of the said minutes to the Secretary of State.

30. (1) At the first meeting of the Council after the commencement of this Order and thereafter at the first meeting after every general election, and before proceeding to the despatch of any other business, the Council shall elect a member to be the Speaker.

(2) As soon as may be after the election of Executive Committees and of Ministers in accordance with the provisions of articles 34 and 35, the Council shall elect two members to be, respectively, the Deputy Speaker and Chairman of Committees (herein called "the Deputy Speaker") and the Deputy Chairman of Committees.

(3) Each person elected to be the Speaker, Deputy Speaker or Deputy Chairman of Committees shall hold office until the next dissolution of the Council, unless he shall sooner resign such office or cease, from any cause whatsoever, to be a member of the Council.

(4) In the case of a vacancy in any of such offices, another Speaker or Deputy Speaker or Deputy Chairman of Committees, as the case may be, shall be elected by the Council at the beginning of the next meeting after the occurrence of the vacancy.

(5) The Speaker, or in his absence, the Deputy Speaker, and in the absence of both Speaker and Deputy Speaker, the Deputy Chairman of Committees shall preside at the meetings of the Council. In the absence of the Speaker, the Deputy Speaker, and the Deputy Chairman of Committees, some member elected by the Council shall preside.

(6) There shall be paid to the Speaker, the Deputy Speaker and the Deputy Chairman of Committees such salary as may be determined by the Council with the approval of the Governor.

31. (1) As soon as may be after the election of Executive Committees and Ministers after each general election in accordance with the provisions of articles 34 and 35, the Council shall be divided by the Speaker into two Standing Committees, which shall be called, respectively, "Standing Committee A" and "Standing Committee B," for the consideration of such legislative measures as the Council shall not decide to refer, in the first instance, either to a Committee of the whole Council or to a Select Committee of the Council.

(2) The said Standing Committees shall remain in office until the next succeeding dissolution of the Council after they shall have been formed

(3) Subject to the provisions of this article, the composition of the said Standing Committees, and the procedure at meetings of the same, shall be as may be determined by the standing orders of the Council, provided that every member of the Council, except the Speaker and the Officers of State, shall be a member of one of such Committees

(4) The Deputy Speaker, or in his absence, such member of the Committee as the Committee shall elect, shall preside over Standing Committee A and the Deputy Chairman of Committees or in his absence, such member of the Committee as the Committee shall elect shall preside over Standing Committee B

(5) The Officers of State shall have the right to attend any meeting of either of the aforesaid Standing Committees and to address the Committee upon any question before the Committee but shall not vote

(6) Any member of the Council in charge of any bill referred to either of the aforesaid Standing Committees, if not a member of that Committee, shall nevertheless have the right to attend any meeting at which such bill shall be under discussion and to address the Committee upon the bill and, unless he is an Officer of State, to vote as a member of the Committee upon any question arising in connection with such bill

(7) The standing orders of the Council may provide for the addition to either of the said Standing Committees of any member or members of the other Standing Committee whenever in the opinion of the Council any such addition shall be expedient in order to assist the consideration of any question referred to either of the said Committees

### *Executive Functions of the Council*

32 (1) Subject to the provisions of this Order, the State Council shall be charged with the administration of the subjects and functions of Government specified in the seven groups given in the first schedule to this Order or in any amendment of that schedule or which shall be deemed to be included in any of those groups in accordance with this article

(2) The Council may, by resolution, amend the first schedule and may declare that any subjects or functions not expressly mentioned in that schedule shall be deemed to be included in any of the groups specified therein, provided that no subject or function included in the second schedule to this Order shall be included in the first schedule, and provided, further, that the division into seven groups of such subjects and functions as may be included

in the first schedule shall be preserved : but no such resolution or declaration shall have effect until it has been approved by the Governor.

(3) Until the first election of Executive Committees and the first appointment of Ministers, after the commencement of this Order shall be complete, the Governor may exercise the power given to the Council by the preceding clause of this article to declare that any subjects or functions not expressly mentioned in the first schedule shall be deemed to be included in any of the groups specified therein.

(4) If any doubt shall arise as to which group in the first schedule includes any subject or function not expressly mentioned in that schedule, or in any declaration by the Governor or by the Council in accordance with this article, the decision of the Council shall, subject to approval by the Governor, be final.

(5) Until the first election of Executive Committees and the first appointment of Ministers after the commencement of this Order shall be complete, the executive functions hereby committed to the Council shall be vested in the Governor.

33. (1) Each of the Officers of State shall, subject to the provisions of this Order, and to the directions of the Governor, have charge of the subjects and shall exercise the functions allotted to him in the second schedule to this Order or in any amendment of that schedule or which shall be deemed to be included in the group allotted to him in accordance with this article.

(2) The Governor may, with the approval of the Secretary of State, amend the second schedule, and may, in his own discretion, declare that any subject or function not expressly mentioned in the second schedule shall be deemed to be included in any of the groups specified therein, provided that no subject or function included in the first schedule to this Order shall be included in the second schedule.

(3) If any doubt shall arise as to whether any subject or function is included in the first schedule or in the second schedule, the decision of the Secretary of State shall be final.

#### *Executive Committees and Ministers*

34. (1) At the first meeting of the Council after the commencement of this Order and thereafter at the first meeting after every general election, the Council shall elect by secret ballot from among its members seven Executive Committees each of which shall be charged, until the next following dissolution of the Council, with the administration, subject to the provisions of this Order, of such one of the seven groups of subjects and functions specified in the first schedule hereto as the Council when electing the Committee shall determine.

(2) The Council shall proceed to the election of the aforesaid Committees as soon as may be after the election of a Speaker as provided by article 30, and before proceeding to the despatch of any other business. Each Committee shall contain as nearly as possible an equal number of members and every member of the Council, except the Speaker and the Officers of State, shall be elected to one of such Committees, and no member of the Council shall be elected to more than one, provided that a member of a Committee elected to be the Deputy Speaker or Deputy Chairman of Committees or to fill any vacancy in the office of Speaker or Deputy Speaker or Deputy Chairman of Committees in accordance with article 30 shall, upon such election, cease to be a member of such Committee.

(3) Subject to the provisions of this article procedure for the election of Executive Committees and for the assignment to an Executive Committee of any member elected to the Council after the first meeting thereof following a general election and for the transfer of members from one Committee to another shall be as prescribed by the standing orders of the Council.

35 (1) As soon as may be after the election of Executive Committees in accordance with article 34, and before the Council proceeds to any other business, each Executive Committee shall elect a Chairman by secret ballot from among its members, and whenever the office of Chairman of an Executive Committee shall become vacant the Committee shall, in like manner, elect a member thereof to be the Chairman of the Committee.

(2) The member elected by the Committee to be the Chairman thereof shall be appointed by the Governor to be the Minister for that group of subjects and functions which the Committee of which he is the Chairman was elected to administer, provided that the Governor may, in his discretion, decline to appoint as a Minister any member of a Committee so elected as aforesaid and, in such case the election of such member as the Chairman of the Committee shall be void and the Committee shall elect another member to be the Chairman thereof.

(3) If at any time any Minister shall be prevented temporarily by absence from the Island, or by illness or other sufficient cause, from exercising the functions of his office, the Committee of which that Minister is the Chairman may, with the approval of the Governor, elect another member of the Committee to act as the Chairman of the Committee until the Minister shall resume the exercise of the functions of his office. A member so elected shall be appointed by the Governor to act in place of the Minister until such time as aforesaid, provided that the Governor may, in his discretion, decline to appoint the member so elected and the Committee shall thereupon elect another member to act for the Minister. All the

provisions of this Order which apply to a Minister shall apply to any member appointed to act for a Minister during the period of such appointment.

(4) Subject to the provisions of this article, the procedure for election of the Chairman and Acting Chairman of Executive Committees shall be as prescribed by the standing orders of the Council.

(5) There shall be paid to each Minister such salary as may be determined by the Council with the approval of the Governor.

36. Every member appointed to be a Minister shall before entering on the duties of his office take and subscribe before the Governor an oath in the following form, or shall make and subscribe before the Governor an affirmation in the corresponding form.

#### FORM OF OATH

I, *A. B.*, do swear that I will well and truly serve His Majesty King George V in the office of Minister for ———. So help me God.

37. Upon an address presented to him by the Council praying for the termination of the appointment of any member as a Minister the Governor may at any time terminate such member's appointment and such member shall thereupon cease to be the Chairman of the Executive Committee of which he is a member.

38. (1) No member shall be eligible for appointment as a Minister who is a director of any company having any direct or indirect pecuniary interest in any contract with the Government of the Island.

(2) If any Minister shall become a director of any such company as aforesaid during his term of office as a Minister, his appointment as a Minister shall thereupon become void and he shall cease to be the Chairman of the Executive Committee of which he is a member.

39 (1) Each Executive Committee shall exercise general control over the departments of Government concerned with subjects or functions in the Committee's charge; and the exercise of such control, and the transaction of business relating to any such subjects or functions, shall be regulated by such procedure as the Governor shall prescribe, provided that the procedure prescribed by the Governor may from time to time be amended or varied by the Council with the approval of the Governor.

(2) The transaction of business concerning any subjects or functions in the charge of an Officer of State shall be regulated by such procedure as the Governor shall prescribe.

40. (1) The Governor shall appoint some person to be the Secretary to each Minister and may at any time revoke any such appointment.

A person appointed to be the Secretary to a Minister shall also be the Clerk to the Executive Committee of which that Minister is the Chairman

(2) The power conferred upon the Governor by this article shall include a power to appoint a person to perform temporarily the duties of the Secretary to a Minister and Clerk to an Executive Committee whenever in the Governor's opinion circumstances shall so require and to revoke any such temporary appointment at any time

(3) In the exercise of the powers conferred upon him by this article the Governor shall consult the Minister concerned provided that the Governor may subject to such conditions as he shall prescribe delegate to any Minister the power to make and to revoke any temporary appointment authorised by this article

41 (1) Executive Committees shall meet whenever summoned by the Clerk either by direction of the Chairman or at the request of any three members of the Committee

(2) In the absence of the Chairman such member of the Committee as the Committee may elect shall preside at the meetings of the Committee

(3) No business shall be transacted unless there shall be present at least three members in addition to the Chairman or presiding member and the Clerk

(4) All questions proposed in an Executive Committee shall be decided by a majority of the votes of the members of the Committee there present and voting. The Chairman or presiding member shall have an original vote on all such questions and also a casting vote if the votes shall be equally divided

(5) A statement of all matters for discussion at any meeting of a Committee shall be forwarded by the Clerk to each member and to the Governor and to the Chief Secretary before the meeting is held. The Clerk shall also forward to the Governor and to the Chief Secretary copies of any document to be laid before the Committee if copies are available

(6) The Clerk shall keep minutes of the proceedings of the Committee and shall forward a copy of the minutes to the Governor and to the Chief Secretary as soon as may be after each meeting

(7) An Executive Committee shall not be disqualified for the transaction of business by reason of any vacancy or vacancies among the members thereof

(8) Subject to the provisions of this article the procedure at the meetings of any Executive Committee shall be such as the standing orders of the Council may prescribe

42. The Governor may require any Minister to furnish him with reports upon and any official documents relating to any matters falling under the control of the Executive Committee of which that Minister is the Chairman.

43. The Chief Secretary, or his deputy, shall be entitled to attend any meeting of any Executive Committee and to address the Committee upon any subject but may not vote.

44. (1) When the affairs of any Government department which is concerned with subjects or functions in the charge of an Executive Committee shall be under discussion at any meeting of the Committee, the head of such department shall be entitled to attend the meeting and to be heard by the Committee upon the affairs of his department which are under discussion, and it shall be the duty of the Clerk to the Committee to give notice to the head of any such department of the time and place at which the affairs of that department will be discussed by the Committee.

(2) A Minister, or his Committee, may at any time require the head of a department concerned with subjects or functions in the charge of the Committee to attend, or to cause any other officer or officers of that department to attend, any meeting of the Committee when the affairs of that department are under discussion.

45. (1) When the decision of an Executive Committee requires that any direction shall be given to any Government department concerned with subjects or functions in the Committee's charge, every such direction shall be conveyed to the head of such department by the Minister, or in writing by the Clerk to the Committee by direction of the Minister, but save as provided by this article and by article 48, no such direction shall be given until the approval of such decision by the Council and the ratification of the same by the Governor shall have been received by the Minister in accordance with the provisions hereinafter contained.

(2) When, in the opinion of an Executive Committee, any decision of the Committee shall not be of sufficient importance to require the approval of the Council or the ratification of the Governor before the issue of directions to carry the decision into effect, or when the decision shall, in the opinion of the Committee, require action to be taken too urgently to enable such prior approval or ratification to be obtained, the directions of the Committee may be conveyed to the head of the department concerned and action may be taken in accordance therewith without such prior approval or ratification. In every such case, the Committee shall without delay report to the Council the decision of the Committee and the directions issued thereon and the reasons why such directions were issued without such prior approval and ratification as aforesaid, and the Council shall report the same to the Governor.



(3) The Governor or the Council may require that in the case of such decisions, or classes of decisions, by Executive Committees as may be specified by the Governor or by the Council, as the case may be, no directions shall be issued by an Executive Committee to carry such decisions into effect without such prior approval and ratification as aforesaid

(4) The Council may with the approval of the Governor, by resolution authorise any Executive Committee to issue directions, without such prior approval by the Council and ratification by the Governor as aforesaid, for the purpose of giving effect to such decisions or classes of decisions as the resolution may specify. Whenever a Committee shall issue directions in pursuance of such authority as aforesaid, the Committee shall without delay report to the Council the decision of the Committee and the directions issued thereon and the Council shall report the same to the Governor

46 (1) Every decision of an Executive Committee which shall require the approval of the Council shall be embodied in a report which shall include the *recommendations of the Committee* and shall be presented to the Council for consideration

(2) The Council may accept or reject any such report or may refer it back to the Committee for further consideration. If passed by the Council the report or such part thereof as shall have been passed shall be submitted to the Governor by the Council for ratification

(3) The Governor may either ratify or decline to ratify any report so submitted to him as aforesaid, or may refer the same or any part thereof back to the Council for further consideration, or he may refer the same or any part thereof to the Secretary of State, or he may declare that the report involves an important question of principle, and may require that, before he shall give his decision thereon, the report shall be resubmitted to the Council and shall be passed by a two-thirds majority of all the members of the Council excluding the Officers of State and the Speaker or other presiding member

(4) The decision of the Governor, or of the Secretary of State, upon any such report shall be communicated by the Governor to the Council, and by the Council to the Executive Committee concerned, and if the report or any part thereof shall have been ratified by the Governor or approved by the Secretary of State, the Committee shall transmit the report, or such part thereof as shall have been so ratified or approved as aforesaid, to the head of each department concerned with the subjects or functions to which the report relates, and it shall be the duty of the head of each of such departments to give effect to the report or to such part thereof as shall have been so ratified or approved as aforesaid

(5) If the Governor shall decline to ratify any report so submitted to him as aforesaid, or any part thereof, he shall without delay

report his decision and his reasons therefor to the Secretary of State, who may confirm or vary such decision. If the decision of the Governor shall be varied by the Secretary of State, the Governor shall report the Secretary of State's decision to the Council, and the Council shall communicate the same to the Executive Committee concerned and such Committee shall thereupon direct that effect be given thereto.

47. (1) Every report required by this Order to be made by an Executive Committee to the Council shall be presented to the Council by the Chairman of the Committee, or, in the absence of the Chairman, by such member of the Committee as the Committee may appoint.

(2) Every report required by this Order to be submitted by the Council to the Governor shall be submitted to him by the Speaker, or other presiding member, and the Governor's decision upon any such report shall be given by him by message to the Speaker, or other presiding member, for communication to the Council.

(3) The Council shall communicate with Executive Committees in such manner as the standing orders of the Council shall provide.

48. (1) Nothing contained in articles 45 or 46 shall apply to the exercise of any power conferred upon any Minister or Executive Committee by delegation from the Governor under article 94 or article 95 or otherwise by any written law, and directions may be issued to Government departments in the exercise of any such power without the prior approval of the Council and ratification by the Governor to which articles 45 and 46 refer; provided that the Governor may require that any power so delegated by him shall not be exercised without the prior approval of the Council or ratification by him, or without both such prior approval and ratification, or that decisions of Executive Committees in the exercise of any such power, or for the purpose of advising a Minister in the exercise of such power, shall be reported to the Council.

(2) Decisions of Executive Committees made for the purpose of advising the Governor upon the exercises of any power vested in him shall not be deemed to be decisions which must be reported to the Council unless the Governor shall so require.

### *Governor's Emergency Powers*

49. (1) Notwithstanding anything contained in this Order, whenever the Governor shall consider that a state of emergency has arisen or is imminent, whether from the danger of enemy action or of civil disorder, or from any grave cause, he may by proclamation assume control of any Government department and issue such orders to that department as he may see fit, provided that, in every such case, he shall make a full report immediately to the Secretary of State: and provided, further, that if the Governor with the advice and consent

of the Council shall make provision by law to the satisfaction of the Secretary of State for the exercise by the Governor of such emergency powers, the Secretary of State may declare that this clause of this article shall cease to have effect and on the publication of such declaration in the *Government Gazette* this clause of this article shall cease to have effect accordingly

(2) The Governor shall not assent to any bill repealing or amending any such law as aforesaid unless he shall have previously obtained His Majesty's instructions through the Secretary of State

### *The Board of Ministers and Financial Provisions*

50 (1) There shall be a Board of Ministers which shall be composed of the Officers of State and the Ministers

(2) The Officers of State shall not be entitled to vote upon any question submitted to the Board, but shall have the rights and privileges of membership of the Board in all other respects

(3) The Chief Secretary shall be the Chairman of the Board and there shall be a Vice Chairman who shall be elected by the Board from among the Ministers

(4) If at any time the Vice-Chairman of the Board of Ministers shall be prevented by absence from the Island, or by illness or other sufficient cause, from exercising the functions of his office the Board may elect another Minister to act as Vice Chairman until the Vice-Chairman shall resume the exercise of the functions of his office, and all the provisions of this Order which apply to the Vice Chairman of the Board of Ministers shall apply to the Minister so elected during the period for which he shall act as Vice Chairman of the Board

(5) The Chief Secretary shall preside over the Board of Ministers and in his absence the Vice Chairman of the Board shall preside

51 The Vice Chairman of the Board of Ministers shall be the representative of the Board in the Council and shall be styled "the Leader of the State Council"

52 The Governor shall appoint some fit person to be Secretary to the Board of Ministers, and may at any time revoke any such appointment. The Governor may also appoint a person to perform temporarily the duties of the Secretary to the Board whenever, in his opinion, circumstances shall so require, and may at any time revoke any such temporary appointment

53 (1) The Board of Ministers shall not proceed to the despatch of business unless duly summoned by the Chief Secretary who may from time to time, and shall whenever the Vice Chairman so requests, convene a meeting of the Board

(2) No business shall be transacted unless there shall be present at least three members, exclusive of the Officers of State

(3) All questions proposed to the Board of Ministers shall be decided by a majority of the Ministers there present and voting and, save as provided by article 71, no member of the Board shall have more than one vote.

(4) A statement of all matters for discussion at any meeting of the Board shall be forwarded by the Secretary to each member and to the Governor before the meeting is held. The Secretary shall also forward to the Governor a copy of any document to be laid before the Board if a copy is available.

(5) The Secretary shall keep minutes of the proceedings of the Board and shall forward a copy of the minutes to the Governor as soon as may be after each meeting.

(6) The Board shall not be disqualified for the transaction of business by reason of any vacancy or vacancies among the members thereof.

(7) Subject to the provisions of this article, the procedure at meetings of the Board shall be such as the Board shall prescribe.

54. *In the discharge of any function or duty imposed by this Order upon the Board of Ministers, the Board may require the head of any Government department to attend or to cause any other officer of his department to attend, any meeting of the Board and to give such assistance to the Board as the Board may require.*

55. Subject to the provisions of article 22, the Board of Ministers shall determine the order in which any business, whether executive or legislative, to be brought before the Council, by the Board of Ministers or by any Executive Committee or Officer of State, shall be despatched, and may prescribe the procedure by which the settlement of questions affecting more than one Executive Committee shall be arranged.

56. (1) It shall be the duty of the Board of Ministers to prepare, in consultation with the Financial Secretary, the annual estimates of revenue and expenditure for the Island and all supplementary estimates of expenditure.

(2) The annual estimates of expenditure shall state under distinct heads every item which is expected to come in course of payment during the year to which the estimates relate and, in addition to items of expenditure which shall require the approval of the Council, shall include in a separate column items of expenditure already authorised by law. Each head of expenditure shall be divided into such sub-heads as the Board of Ministers shall decide.

(3) The annual estimates of revenue and expenditure and all supplementary estimates of expenditure, when approved by the Board of Ministers, shall be laid before the Council for the information of members.

57 (1) Subject to the provisions of article 22, no bill, motion, resolution, or vote for the disposal of, or the imposition of charges upon, any part of the public revenue or other funds of the Island or for the authorisation of any prior disposal of any part of such revenue or funds or for the imposition or augmentation of any tax, or for the repeal or reduction of any tax for the time being in force, shall be introduced in the Council by any member except a Minister or an Officer of State, nor unless such bill, motion, resolution, or vote shall have received the prior approval of the Board of Ministers

(2) Every bill, motion, resolution or vote introduced in the Council for any of the purposes mentioned in the preceding clause of this article shall be accompanied by a report from the Board of Ministers explaining the financial implications thereof and including the observations of the Financial Secretary thereon

(3) In this article the expression ' tax ' does not include any tax raised by local authorities or bodies for local purposes

58 (1) Each Minister and each Officer of State shall, not later than the month of April in each year, submit to the Board of Ministers, through the Financial Secretary, the estimates of expenditure proposed by the Minister's Executive Committee, or by the Officer of State, as the case may be, for the ensuing financial year in connection with the subjects or functions under the control of such Committee or Officer of State, provided that no such estimate shall be submitted to the Board of Ministers until the Executive Committee or Officer of State by whom the same shall be proposed shall have consulted the Financial Secretary and shall have considered his report

(2) If any Minister or Officer of State shall fail to comply with the provisions of the preceding clause of this article, the Governor may cause to be prepared, with such assistance as he may require from the Board of Ministers and from the heads of any Government departments, an estimate of expenditure for the ensuing financial year in connection with the subjects or functions under the control of such Executive Committee or Officer of State, and may forward the same, certified under his hand, to the Board of Ministers and the Board shall deal with an estimate so received from the Governor in all respects as though it had been received from a Minister or Officer of State in accordance with this article

59 (1) The annual estimates of expenditure for the Island, to the extent to which such expenditure shall not previously have been authorised by any law in force in the Island, shall be embodied in a bill, in this Order called " The Annual Appropriation Bill " which shall be submitted annually to the Council in or about the month of June or as soon thereafter as circumstances will permit

(2) In every Annual Appropriation Bill the expenditure proposed shall be allocated to specific purposes under distinct heads

corresponding to the heads mentioned in the annual estimates in accordance with article 56.

(3) The authority for expenditure which the passage into law of any such bill shall convey shall lapse at the end of the financial year to which the bill relates.

60. All disbursements of the public revenue or other funds of the Island in any financial year which shall not have been authorised by the passage into law of the Annual Appropriation Bill for that year or otherwise by any law in force in the Island shall be specified in a bill, in this Order called "The Supplementary Appropriation Bill", which shall be submitted to the Council as soon as may be after the close of the financial year in which such disbursements were made.

61. Whenever any payment of public money shall be, or shall have been, authorised by this Order or by any other law in force in the Island other than the Annual Appropriation Law, it shall be lawful for the Financial Secretary, with the authority of the Governor, to make any such payment, and to accept a charge upon his accounts in respect of any such payment.

62. Subject to the provisions of article 66, the Financial Secretary shall not make any payment of public money or accept any charge on his accounts in any financial year in respect of services for which provision has been made in the Annual Appropriation Law for that year, unless he shall be authorised to do so by—

(a) a general warrant, signed by the Governor, in accordance with the provisions of article 63;

(b) a requisition, approved by the Governor, in accordance with the provisions of article 64.

63. As soon as may be after the enactment of the Annual Appropriation Law for any year, the Financial Secretary shall prepare a complete schedule of the personal emoluments and other public services provided for in the estimates and in the Annual Appropriation Law for that year over which the Board of Ministers does not desire to retain a special control and of the provision authorised by that law in respect of the same. Such schedule shall be annexed to the general warrant which, when signed by the Governor, shall authorise payments by the Financial Secretary monthly, or at such periods as may be necessary during the year, in respect of the services therein enumerated.

64. Whenever in the opinion of an Executive Committee or of an Officer of State, after prior consultation with the Financial Secretary, it shall be necessary to incur expenditure on a service for which provision shall have been made in the Annual Appropriation Law, but the expenditure on which shall not have been authorised by the general warrant, the Minister or Officer of State, as the case may be, shall forward to the Board of Ministers, through the Financial

Secretary, a requisition stating the whole extent and estimated cost of the service required and the reasons therefor, and no such expenditure shall be incurred until the requisition shall have been approved by the Board of Ministers and by the Governor

65 (1) Whenever in the opinion of an Executive Committee or of an Officer of State, after prior consultation with the Financial Secretary, it shall be necessary to incur expenditure for which provision shall not have been made in the Annual Appropriation Law or by this Order or by any other law in force in the Island, the Minister or Officer of State, as the case may be, shall forward to the Board of Ministers, through the Financial Secretary, a statement showing the whole extent and estimated cost of the service required and the reasons therefor

(2) If the Board of Ministers shall approve any such expenditure as aforesaid the Board shall include the same in a supplementary estimate and shall submit the same for the approval of the Council and no such expenditure shall be incurred unless the said estimate of the Board shall have been approved by the Council and ratified by the Governor nor until the same shall be authorised by special warrant approved by the Board and signed by the Governor

(3) Whenever the Board of Ministers shall propose any expenditure for the approval of the Council in accordance with this article, the Board shall present to the Council a report explaining the nature and extent of the expenditure and the reasons therefor and including the observations of the Financial Secretary thereon

66 Notwithstanding anything contained in articles 62 and 65, if the Board of Ministers shall decline to include in the general warrant, or to approve a requisition or special warrant for, any expenditure which shall be provided for in the estimates and in the Annual Appropriation Law for any year, or which shall be approved by a vote passed by the Council or having effect as though it had been so passed, the Governor may, by warrant under his hand, authorise the Financial Secretary to make any payment, or to accept any charge upon his accounts, in respect of any such expenditure

67 (1) Notwithstanding anything contained in article 65, if the Board of Ministers shall consider that any expenditure to which that article refers shall be required too urgently to enable the provisions of that article to be observed before such expenditure is incurred, the Board may submit to the Governor a special warrant to authorise such expenditure, in anticipation of the approval of the Council, on the personal responsibility of every Minister who shall have approved the same, and such warrant, when signed by the Governor, shall authorise the Financial Secretary to make any payment or to accept any charge on his accounts in accordance therewith

(2) A report of any expenditure incurred under the authority of a special warrant issued under this article, including the

observations of the Financial Secretary thereon, shall be submitted by the Board of Ministers for the approval of the Council at the earliest opportunity.

68. Any Annual or Supplementary Appropriation Bill and any bill, motion, resolution, or vote to which article 57 refers may be referred by the Council to the Board of Ministers for further consideration, provided that the Council shall not so refer any such bill, motion, resolution, or vote for further consideration more than once, and provided further that if the Council shall not have passed, with or without amendment, any Annual Appropriation Bill within 3 months after the first reading of the bill shall have been moved, the Council shall be deemed to have rejected the bill.

69. (1) If the Council, with or without reference to the Board of Ministers for further consideration, shall reject the whole of any Annual Appropriation Bill, the Governor shall dissolve the Council.

(2) The Governor shall also dissolve the Council if, in his opinion, by reason of the decision of the Council upon any bill, motion, resolution, or vote, to which article 57 refers, or upon any motion expressly directed to test the confidence of the Council in the Board of Ministers, it shall be apparent that the Board no longer retains the confidence of the Council.

70. If at any time the Council shall be dissolved before financial provision shall have been made for the essential public services of the Island sufficient for the period which must elapse before such provision can be made by a new Council, it shall be lawful for the Governor by warrant under his hand to authorise the Financial Secretary to make such disbursements from the public revenue and other funds of the Island as shall be sufficient for such services during such period but no longer.

71. Notwithstanding anything contained in this Order, upon a dissolution of the Council and until the next succeeding election of Executive Committees and appointment of Ministers in accordance with this Order, the following provisions shall have effect :—

(a) The executive functions committed to the Council by article 32 shall be vested in the Board of Ministers as constituted immediately prior to the dissolution of the Council and that Board shall continue to be styled “ the Board of Ministers ” and to have and to exercise, as nearly as may be, all the powers and functions which it had and exercised immediately prior to the dissolution of the Council.

(b) All the powers and functions conferred by this Order, or by any other law, upon any Executive Committee, except the election of a Chairman of the Committee, shall be vested in the person who, immediately prior to the dissolution of the Council, was the Chairman of that Executive Committee, and such person shall continue to be



styled "Minister" and to have and exercise, during the period aforesaid, all the powers and functions which, immediately prior to the dissolution of the Council, he had and exercised as a Minister

(c) All the provisions of this Order which relate to reports from Executive Committees to the Council shall relate, as nearly as may be, to reports from Ministers to the Board of Ministers and all the provisions of this Order which relate to reports from the Council to the Governor shall relate, as nearly as may be, to reports from the Board of Ministers to the Governor

(d) If any Minister shall be prevented by illness or by absence from the Island, or other sufficient cause, from exercising the functions of his office, the Governor may appoint a person to exercise temporarily the powers and functions of that Minister from among the Board of Ministers, excluding the Officers of State, or from among the persons who, immediately prior to the dissolution of the Council, constituted the Executive Committee of which that Minister was the Chairman. If the person so appointed shall be already a member of the Board of Ministers he shall be entitled to a vote, at meetings of the Board, by reason of such appointment, in addition to the vote to which he is entitled by reason of his prior membership of the Board

### *Legislative Functions of the Council*

72 It shall be lawful for the Governor, with the advice and consent of the Council, to make laws for the peace, order, and good government of the Island provided nevertheless and it is hereby reserved to His Majesty his heirs and successors, with the advice of his or their Privy Council, to make from time to time all such laws as may appear necessary for the peace, order, and good government of the Island as fully and effectually as if this Order had not been made

73 A law may be enacted in accordance with this Order defining the privileges, immunities, and powers to be held, enjoyed, and exercised by the Council and the members thereof, provided that no such privileges, immunities, or powers shall exceed those for the time being held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Northern Ireland or the members thereof

74 No law made by the Governor, with the advice and consent of the Council, shall take effect until the Governor shall have assented thereto in the name and on behalf of His Majesty and shall have signed the same in token of such assent, provided that if the Governor shall, in accordance with this Order, reserve any bill passed by the Council for the signification of His Majesty's pleasure thereon, such bill shall become law and take effect so soon as His Majesty shall have given his assent thereto, either by Order in Council or through the Secretary of State, and the Governor shall have signified such assent by proclamation published in the *Government Gazette*

75. When the Governor assents to a law, he shall by the first convenient opportunity transmit an authentic copy of the law, in duplicate, to the Secretary of State, and it shall be lawful for His Majesty, at any time within 2 years after such copy shall have been received by the Secretary of State, to notify to the Governor his disallowance of such law through the Secretary of State, and every law so disallowed shall become null and void from and after the day on which the Governor shall signify such disallowance by proclamation in the *Government Gazette*.

76. When a bill passed by the Council is presented to the Governor for his assent he shall, according to his discretion, but subject to the provisions of this Order and of any instructions addressed to him under His Majesty's Sign Manual and Signet or through the Secretary of State, declare that he assents thereto, or refuses his assent to the same, or that he reserves the same for the signification of His Majesty's pleasure.

77. The Governor may reserve any bill passed by the Council for the signification of His Majesty's pleasure thereon, and he shall so reserve any such bill by which any provision of this Order, or of any other Order of His Majesty in Council, is repealed or varied, or which is in any way repugnant to or inconsistent with any of the provisions of this Order, or of any such other Order, except where by this Order, or by any such other Order, power is expressly given to the Council to make provision by law. When the Governor so reserves any bill he shall by the first convenient opportunity transmit an authentic copy in duplicate to the Secretary of State.

78. In assenting to any bill the Governor may by order declare that the law shall be withheld from operation for a period not exceeding 6 months, and in such case, notwithstanding the provisions of article 74, such law shall not take effect until the expiration of the period for which the same shall have been withheld from operation by the Governor.

79. The Governor may return to the Council for further consideration any bill presented to him for his assent, or for the ascertainment of His Majesty's pleasure thereon, and may transmit therewith any amendments to the bill which he may recommend.

80. When the Governor is of opinion that any bill introduced or about to be introduced into the Council involves an important question of principle he may at any time before the votes of members upon the third reading of the bill have been taken, communicate such opinion to the Council by message to the Speaker, and may require that the bill shall not be presented to him for his assent unless at any reading subsequent to that requirement it shall have been passed by a two-thirds majority of all the members of the Council, excluding the Officers of State and the Speaker or other presiding member.

81 (1) If the Governor shall exercise in respect of any bill any of the powers conferred upon him by articles 78 and 80, he shall forthwith report his decision to the Secretary of State and it shall be lawful for the Secretary of State to cancel or vary the Governor's decision in regard to the same

(2) The Governor shall communicate the directions of the Secretary of State to the Council and thereupon such directions shall take effect

82 As soon as possible after the commencement of each year the Governor shall cause a complete collection of all ordinances enacted during the preceding year to be published for general information

### *Audit of Public Accounts*

83 There shall be an Auditor-General who shall be appointed by the Governor and shall hold office during good behaviour, provided that he shall be removed from office by the Governor upon an address praying for his removal presented to the Governor by the Council, provided also that he may be required by the Governor to retire from the public service on the ground of age or infirmity, whether of mind or body, in the like circumstances and subject to the same conditions as any other public officer in receipt of similar pensionable emoluments

84 The Auditor General shall be responsible for the audit and inspection of all public accounts of the Government. He shall see that in all matters relating to finance and accounts this Order and the laws of the Island and all lawful directions of the Governor, or of the Council with the approval of the Governor, are strictly observed and shall bring to the notice of the Governor and of the Council any failure in their observance. The Auditor-General and his deputies are at all times entitled to have access to all books, records, or returns relating to accounts, and all accounting officers shall give them every facility for inspecting such documents

85 As soon as possible after the close of each financial year the Auditor-General shall prepare a report on the revenue and expenditure of the year, and in such report he shall deal with the collection of revenue, the state of the arrears, the manner in which the accounts of the Island are kept, the sufficiency of existing checks against fraud, the nature and extent of the audit applied, and any special questions arising out of the accounts. He shall furnish this report to the Governor and to the Speaker for communication to the Council

### *The Public Service*

86 (1) The appointment, promotion, transfer, dismissal and disciplinary control of public officers shall be vested in the Governor, subject to any instructions given under His Majesty's Sign Manual and Signet or through the Secretary of State and, in so far as concerns the Auditor General, to the provisions of article 83

(2) The Governor may, subject to such instructions and provisions as aforesaid, and with the approval of the Secretary of State, delegate to such public officers having authority in or over Government departments as he shall think fit, subject to such conditions as he may prescribe, the appointment, promotion, transfer, dismissal, and disciplinary control of officers who are not in receipt of annual pensionable emoluments exceeding such sum as may be specified in such instructions.

87. (1) No bill, motion, resolution or vote affecting any officer in the public service at the date of the commencement of this Order and involving any alteration in his salary, allowances, or conditions of service, or in the law, regulations or practice governing the grant of leave or passages, or the payment of pensions or gratuities, applicable to any such officer or his dependants or personal representatives at the date aforesaid shall be introduced into the Council without the sanction of the Governor ; and no bill, motion, resolution, vote or other proposal involving any such alteration as aforesaid which, in the opinion of the Governor, shall be to the prejudice of any such officer shall take effect until it shall have been approved by the Secretary of State.

(2) No bill, motion, resolution, vote, or other proposal affecting any officer appointed after the commencement of this Order to any public office, appointment to which is subject to the approval of the Secretary of State, and involving any alteration which, in the opinion of the Governor, is to the prejudice of such officer, in the salary, allowances, or conditions of service, or in the law, regulations, or practice governing the grant of leave or passages or the payment of pensions or gratuities, for the time being enjoyed by or applicable to any such officer or his dependants or personal representatives, shall take effect until it shall have been approved by the Secretary of State.

(3) All pensions and gratuities which have been granted to officers who have retired from the public service before the date of the commencement of this Order or to the dependants of officers who have died before that date shall be governed by the law and regulations under which they were granted.

(4) Any provision necessary in order to preserve rights or privileges which by this article may not be varied without the approval of the Secretary of State shall, to the extent required by any decision of the Secretary of State, be deemed to be necessary to give effect to the provisions of this Order within the meaning of article 22.

88. (1) The Governor may, with the approval of the Secretary of State, make special regulations regarding the grant of pensions and gratuities on retirement to the following classes of public officers holding office at the date of the commencement of this Order, namely :—

(a) persons who, at any time prior to the 17th day of July, 1928 were appointed to any public office with or subject to the general or special approval of the Secretary of State or who, prior to the date aforesaid were selected for appointment to any public office by the Secretary of State or had entered into agreement with the Crown Agents for the Colonies to serve in any public office for a term of years,

(b) persons who at any time after the 16th day of July, 1928 and prior to the 12th day of December, 1929 were appointed or selected for appointment to any public office with or subject to such approval or by such authority, or had entered into such agreement, as is mentioned in the sub-head (a) immediately preceding

Subject to the provisions of the following clauses of this article such regulations shall provide that any person included in the first class mentioned above may retire at any time after the commencement of this Order and that any person included in the second class may retire at any time within 5 years after the commencement of this Order and on such retirement in the case of an officer included in either of the two classes aforesaid may be granted a pension or gratuity not less than that which he might have been granted in accordance with the minute on pensions in force at the date of the commencement of this Order if at the date of his retirement he had been compelled to retire by reason of the abolition of his office

(2) Before any public officer shall retire in the exercise of a right by the regulations aforesaid he shall give to the Governor such notice of his intention to retire as the regulations shall prescribe

(3) Save with the permission of the Governor a public officer may not retire in the exercise of any right given by the regulations aforesaid if proceedings for his dismissal are being taken or are about to be taken nor unless if so required by the Governor he shall satisfy the Governor that he is not incapacitated by infirmity either of mind or body for the discharge of his duties

(4) Pensions at the rate provided by the regulations aforesaid shall be granted only in cases of faithful and meritorious service and shall be subject to reduction, or may be refused in the same circumstances and to the same extent as a pension which may be granted under the minute on pensions aforesaid

89 (1) There shall be a Public Services Commission to advise the Governor in the exercise of the powers conferred upon him by article 86 The Chief Secretary shall be the Chairman and such other persons in the public service as the Governor shall appoint shall be members In the absence of the Chief Secretary such other person as the Governor shall appoint shall act as Chairman of the Commission

(2) The Governor may at any time revoke any appointment made by him under this article

(3) The Governor may by regulation subject to the approval of the Secretary of State prescribe the duties of and the procedure to be followed by the Commission in the exercise of their duties and the number which shall form a quorum.

90. The Public Services Commission may require any public officer to attend and to give evidence before it touching any matter which it shall have under consideration and may require the production of any official documents relating to any such matter.

91. (1) The Governor shall receive a salary of £8,000 a year, provided that during any period for which the Governor is absent from the Island and the Government shall be administered by another officer in his stead (herein called "the Officer administering the Government") a part of the annual salary aforesaid, at the rate of £2,000 a year, shall be paid to that officer.

(2) From and after the date of the first meeting of the Council after this Order shall come into operation the Chief Secretary shall receive a salary of £3,000 a year and the Legal Secretary and the Financial Secretary shall each receive a salary of £2,400 a year.

(3) The salaries and payments provided by this article shall be charged upon the public revenue and other funds of the Island.

(4) In the assessment of any income tax which may be payable under any written law no account shall be taken of the salaries or payments provided by this article for the Governor, or for the Officer administering the Government, or of the annual value of any official residences assigned to either of them.

*Continuation or Transfer of Powers vested in certain  
Authorities by Local Law*

92. All powers, authorities and functions which are or shall be vested in the Governor by any written law in force on the date when the first election of Executive Committees and the first appointment of Ministers in accordance with this Order shall be complete shall, so far as the same shall continue in existence and be capable of being exercised after the said date, remain vested in the Governor.

93. On and after the date when the first election of Executive Committees and the first appointment of Ministers in accordance with this Order shall be complete, all powers, authorities and functions which at the said date shall be vested by any written law in the Governor in Executive Council, howsoever the association of the said Council with the Governor may be described in any such law, shall, so far as the same shall continue in existence and be capable of being exercised after the said date, be vested in the Governor.

94. The Governor may, by order published in the *Government Gazette*, delegate to any Officer of State or to any Executive

Committee or to the head of any Government department, subject to such conditions or limitations as he may prescribe, the exercise of any power, authority or function to which articles 92 and 93 refer

95 The Governor may, by order published in the *Government Gazette*, direct that any power, authority or function which shall be vested in the Colonial Secretary, the Controller of Revenue, or any other public officer, by any written law in force on the date when the first election of Executive Committees and the first appointment of Ministers in accordance with this Order shall be complete, shall, so far as the same shall continue in existence and be capable of being exercised after that date, be vested, subject to such conditions or limitations as the Governor may prescribe, in any Officer of State, or in any Minister or Executive Committee, or in any public officer specified by the Governor in such order

96 Nothing contained in any of the four immediately preceding articles or in any order issued thereunder, shall affect the passing by the Council of any law relating to the vesting or the exercise of any of the powers to which those articles refer

#### GENERAL

97 (1) If any difficulty arises as to the first establishment of the Council after the commencement of this Order, or otherwise in first giving effect to the provisions of this Order, the Governor, as occasion may require, may, by order published in the *Government Gazette*, do anything which appears to him necessary for the purpose of removing the difficulty

(2) The Governor may, by proclamation in the *Government Gazette*, within 6 months after the commencement of this Order, and provided that His Majesty's approval be previously signified to him through the Secretary of State, vary, annul or add to any of the provisions of this Order in order to carry out the purposes of the same

98 His Majesty hereby reserves to himself, his heirs, and successors power, with the advice of his or their Privy Council, to revoke, alter, or amend this Order as to him or them shall seem fit

M P A HANKEY

#### *First Schedule*

(ARTICLE 32)

#### I HOME AFFAIRS

Police

Prisons

Excise and local option

Functions of the Government Analyst

Religious associations and temporalities

Subjects of internal administration not otherwise allotted

## II. AGRICULTURAL AND LANDS.

Lands.  
Forests.  
Irrigation.  
Agriculture.  
Veterinary services.  
Surveys and meteorology.  
Co-operative societies.

## III. LOCAL ADMINISTRATION.

Local government.  
Mines and salt.  
Fisheries.  
Acquisition of land for public purposes.

## IV. HEALTH.

Medical services.  
Sanitary services.  
Housing.

## V. LABOUR, INDUSTRY AND COMMERCE.

Labour.  
Industrial welfare.  
Commerce.  
Functions of the Registrar-General.  
Poor relief.

## VI. EDUCATION.

Education.  
Museums.  
Archæology.

## VII. COMMUNICATIONS AND WORKS.

Public works.  
Railways.  
Electrical undertakings.  
Posts and telegraphs.  
Ports and harbours.

*Second Schedule*

(ARTICLE 33)

## I. CHIEF SECRETARY.

External affairs.  
Defence.  
The public services.



## II LEGAL SECRETARY

The administration of justice  
 Drafting of legislation  
 Legal advice to Government  
 Criminal prosecutions and civil proceedings on behalf of  
 the Crown  
 Elections to the State Council  
 Functions of the Public Trustee

## III FINANCIAL SECRETARY

Finance  
 Supply  
 Stores and printing  
 Establishments  
 Customs  
 Estate duty and stamps  
 Valuations on behalf of Government

## 2 State Council Elections Order in Council, 1931 (as amended 1934 and 1935)

\* \* \*

6 (1) No person shall be qualified to have his name entered or retained in any register of voters in any year if such person—

(a) is not a British subject, or

(b) was less than 21 years of age on the 1st day of August in that year, or

(c) has not for a continuous period 6 months in the 18 months immediately prior to the 1st day of August in that year resided in the electoral district to which the register relates, or

(d) is serving a sentence of penal servitude or imprisonment imposed by any court in any part of His Majesty's dominions or in any country under His Majesty's protection or in respect of which a mandate is being exercised by His Majesty or by the Government of any part of His Majesty's dominions, for an offence punishable with hard labour or rigorous imprisonment for a term exceeding

12 months ; or is under sentence of death imposed by any such court, or is serving any term of imprisonment awarded in lieu of execution of such sentence ; or

(e) has been adjudged by a competent court to be of unsound mind ; or

(f) is incapable of being registered as a voter by reason of his conviction of a corrupt or illegal practice, or by reason of the report of an election judge, in accordance with this Order.

(2) For the purpose of this article continuity of residence in an electoral district shall not be deemed to be interrupted by reason only of absence in the performance of any duty accruing from or incidental to any office, service, or employment held or undertaken by any person otherwise qualified to have his name entered on any register.

7. Any person not otherwise disqualified shall be qualified to have his name entered in a register of voters if he is domiciled in Ceylon or if he is qualified in accordance with article 8 or article 9 of this Order ; provided that, except in the case of persons possessing Ceylon domicile of origin, domicile shall not be deemed to have been acquired for the purpose of qualifying for registration as a voter by any person who has not resided in Ceylon for a total period of or exceeding 5 years.

8. (1) Any person not otherwise disqualified shall be qualified to have his name entered in a register of voters in any year if he—

(a) is able to read and write English, Sinhalese, or Tamil, and

(b) has or holds one of the following qualifications, viz. :—

(i) The possession or enjoyment of a clear annual income of not less than Rs. 600, during a continuous period of 6 months immediately prior to the 1st day of August in that year ;

(ii) The ownership of immovable property otherwise than as lessee or usufructuary mortgagee, situate within the electoral district to which the register relates, during a continuous period of 6 months immediately prior to the 1st day of August in that year, the value of which, after allowing for any mortgage debts thereon, is not less than Rs. 1,500 ;

(iii) The occupation as owner or tenant during a continuous period of 6 months immediately prior to the 1st day of August in that year, of any house, warehouse, counting house, shop or other building (hereinafter referred to as “ qualifying property ”), situate within the electoral district to which the register relates, of the annual value of not less than—

(a) Rs. 400 if situated within the limits of any municipal, local board, or sanitary board town, or of any urban district council, or of the Board of Improvement of Nuwara Eliya ;

(b) Rs 200 if situated elsewhere, provided that the qualifying property need not be throughout the period of qualification the same property if the annual value is in no case less than Rs 400 or Rs 200 as the case may be, and if such property is in all cases situate within such electoral district as aforesaid

(2) For the purposes of this article the terms "house, warehouse counting house, shop or other building" include any part of a building when that part is separately occupied for the purposes of any trade, business or profession, and any such part may, for the purposes of describing the qualification, be described as office, chambers, studio, or by any like term applicable to the case

(3) Where an occupier is entitled to the sole and exclusive use of any part of a building, that part shall not be deemed to be occupied otherwise than separately by reason only that the occupier is entitled to the joint use of some other part

(4) For the purposes of this article continuity of the occupation of a house shall not be deemed to be interrupted by reason only of permission being given for the occupation of the house as a furnished house by some other person on a monthly tenancy or on a tenancy at will or on a lease for a period not exceeding 5 months in the whole, or by reason only of notice to quit being served and possession being demanded by the landlord of the house

(5) In the case of qualifying property possessed or occupied jointly by two or more persons, each such person, not being a usufructuary mortgagee, shall be qualified to have his name entered on the register of voters, provided that the number of persons does not exceed the number obtained by dividing the annual value of such property, expressed in rupees, by 400 if it is situated within the limits of any municipal, local board, or sanitary board town, or of any urban district council, or of the Board of Improvement of Nuwara Eliya, and by 200 if situated elsewhere

9 (1) Any person not otherwise disqualified shall be qualified to have his name entered in a register of voters if he is in possession of a certificate of permanent settlement granted to him in accordance with this article by the Government Agent or the Assistant Government Agent of the district in which he resides or by any other officer of the Government authorised in writing by the Government Agent or Assistant Government Agent aforesaid in accordance with the general or special directions of the Governor

(2) A certificate of permanent settlement shall be in the form A in the first schedule to this Order, or in such other form as the Governor may prescribe, and shall be issued to any person who satisfies the officer authorised to issue the same that he has been continuously resident in Ceylon for a period of not less than 5 years, exclusive of temporary absences not exceeding a total of 8 months

during such period, and who makes and subscribes before such officer a declaration, which shall be exempt from stamp duty, in the form B in the said schedule, or in such other form as the Governor may prescribe, stating that he is permanently settled in Ceylon or is residing in the Island with intent to settle therein; provided that during such time as any holder of a certificate of permanent settlement may be registered as a voter by reason of the possession of such certificate he shall not be entitled to claim any rights, privileges, or exemptions which under the law of Ceylon are not common to all British subjects resident in the Island.

(3) Any person to whom such a certificate of permanent settlement has been refused may appeal to the Governor whose decision shall be final.

(4) A certificate of permanent settlement shall be cancelled and the name of the person to whom it relates shall, if registered in any register of voters by reason of his possession of such certificate, be removed from such register if at any time it is proved to the satisfaction of the registering or revising officer for the electoral district in which such person resides, or of any other person duly authorised by the Governor in that behalf, that the certificate was obtained fraudulently or by statements which were untrue or that at any time since the granting of the certificate the person to whom it relates has been absent from Ceylon for a continuous period exceeding 12 months.

(5) If any person shall wilfully make a false statement or declaration for the purpose of obtaining a certificate of permanent settlement, or for the purpose of enabling any such certificate to be obtained, he shall on conviction by a police magistrate be liable to a fine not exceeding 100 rupees; provided that an officer authorised to grant a certificate of permanent settlement may require that the application of any person shall be supported by evidence on oath or affirmation and may administer an oath or affirmation for this purpose and any person who in giving such evidence knowingly swears or affirms anything material to the application which is false or incorrect shall be guilty of the offence of giving false evidence and shall be liable to the penalty provided therefor in the Ceylon Penal Code.

10. (1) A person shall be entitled to have his name entered in accordance with this Order on any register for which he is qualified, but he shall not vote at a general election in more than one electoral district.

(2) If any person at a general election votes in more than one electoral district, or asks for a ballot paper for the purpose of so voting, he shall be guilty of an illegal practice, which shall entail the consequences specified in article 69.

## 3. Letters Patent, 1931

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14 We do reserve to ourselves our heirs, and successors, our and their undoubted right with the advice and consent of Parliament, or with the advice of our or their Privy Council, to make from time to time all such laws as may to us or them appear necessary for the peace, order and good government of the Island, as fully and effectually as if these presents had not been made

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## 4 Royal Instructions, 1931

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1 In the exercise of the powers conferred upon him by "The Ceylon (State Council) Order in Council, 1931,"<sup>(1)</sup> the Governor shall have regard to our desire to promote by that Order the devolution upon the inhabitants of Ceylon of responsibility for the management of the internal affairs of the Island

In all matters in which powers and functions are by that Order assigned either to the State Council, or to the Board of Ministers, or to Executive Committees the Governor, in the exercise of that authority which is reserved to him in relation to those matters, shall give the most favourable consideration to the views expressed and to the advice tendered to him by the body in which those powers and functions reside. In all such matters he shall exercise his authority according to his own deliberate judgment, but in such manner that it shall be supervisory rather than executive, and he will not act contrary to the views or to the advice aforesaid unless he shall consider that the principles of our said Order, or his own responsibility thereunder, shall so require

2 The Governor shall consult freely with his Ministers and shall seek to keep himself fully informed of their wishes and opinions and those of the people of the Island. He shall communicate to the Board of Ministers all public despatches which he shall address to or receive from any of our Principal Secretaries of State relating to any subject or function with which the Board of Ministers, or any Executive Committee, is concerned, and such other despatches as he shall think it expedient to communicate for the purpose of informing his Ministers of the tenor of current correspondence between him and any of our Principal Secretaries of State

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4. (i) Except in accordance with the provisions of the second sub-clause of this clause, the Governor shall not assent in our name to any bill falling within any of the following classes :—

(1) Any bill for the divorce of persons joined together in holy matrimony :

(2) Any bill whereby any grant of land or money, or other donation or gratuity, may be made to himself :

(3) Any bill whereby the rights or privileges of public servants may be prejudiced :

(4) Any bill affecting the currency of the Island, or relating to the issue of bank notes :

(5) Any bill establishing any banking association, or amending or altering the constitution, powers, or privileges of any banking association :

(6) Any bill whereby in the opinion of the Governor the financial stability of the Island may be endangered :

(7) Any bill imposing differential duties :

(8) Any bill the provisions of which shall appear inconsistent with obligations imposed upon us by treaty :

(9) Any bill interfering with the discipline or control of our forces by land or sea or air :

(10) Any bill relating to questions of defence or public security, or any matter affecting naval, military, or air forces or volunteer corps or the control of aerial navigation or aircraft or the transport or means of communication of naval, military, or air forces :

(11) Any bill of any extraordinary nature and importance whereby our prerogative, or the rights and property of our subjects not residing in the Island, or the trade and shipping of any part of our dominions, may be prejudiced :

(12) Any bill relating to or affecting trade outside the Island, or docks, harbours, shipping, or any lands, buildings, or other matters of naval, military, or aerial interest or of Imperial concern :

(13) Any bill whereby persons of any particular community or religion are made liable to any disabilities or restrictions to which persons of other communities or religions are not also subjected or made liable, or are granted advantages not extended to persons of other communities or religions :

(14) Any bill diminishing or prejudicing any of the rights or privileges to which at the date of these our Instructions, persons emigrating, or who have emigrated, to the Island from India may be entitled by reason of such emigration :

(15) Any bill the principle of which has evoked serious opposition by any racial, religious, or other minority, and which in the opinion of the Governor is likely to involve oppression or unfairness to any such minority :

(16) Any bill relating to or affecting the administration of justice in the Island

(17) Any bill containing provisions to which our assent has been once refused or which have been disallowed by us

(u) The Governor may assent in our name to any bill falling within any of the classes described in the preceding sub-clause of this clause in any of the following cases —

(a) if he shall have previously obtained our instruction upon such bill through one of our Principal Secretaries of State

(b) if such bill shall contain a clause suspending the operation thereof until the signification in the Island of our pleasure thereupon

(c) if save in the case of a bill which is repugnant to the law of England or inconsistent with any obligations imposed upon us by treaty he shall have satisfied himself that an urgent necessity exists requiring that such bill shall be brought into immediate operation provided that he shall transmit to us by the earliest opportunity any bill to which he shall have so assented together with a statement of his reasons for assenting thereto

5 The Governor shall not declare that he refuses his assent to any bill until he shall have obtained our instructions thereon through one of our Principal Secretaries of State

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## CYPRUS

- 1 Letters Patent constituting the Office of Governor and Commander in Chief and providing for the Government —Westminster March 10 1925

*Text in State Papers Vol CXXI page 60*

*Amendment*

LETTERS PATENT

Westminster November 12 1931

*and Orders 1931 page 138*

*Text in Statutory Rules*

- 2 Royal Instructions to the Governor and Commander in Chief —St James's March 10 1925

3. Law enacted by the Governor and Commander-in-Chief to provide for the Exercise of certain Powers or Rights and the Performance of certain Duties.—January 13, 1932.

Text in *State Papers*, Vol. CXXXV, page 248.

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## 1. Letters Patent, 1931.

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2. And we do hereby give and grant to the Governor full power and authority to make laws for the peace, order and good government of the Colony: Provided, nevertheless, that any such law or any part thereof may be disallowed by us by any Order in Council, or through one of our Principal Secretaries of State, and shall cease to have any force or effect as soon as the disallowance thereof shall be published by the Governor in the *Cyprus Gazette*: Provided also, that nothing herein contained shall affect our right by any Order in Council to make from time to time all such laws as may appear to us necessary for the peace, order and good government of the Colony.

Until repealed or revoked by or in pursuance of any Order in our Privy Council or any law passed by the Governor, all laws, proclamations, regulations or other enactments in force in the Colony at the date of the coming into operation of these our Letters Patent shall, subject to the provisions of these our Letters Patent, remain in force and continue to have full effect in the Colony.

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## 2. Royal Instructions, 1925.

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2. The Executive Council of the Colony shall, save as hereinafter provided, consist of such persons not exceeding four, holding public offices within the Colony as the Governor may by an instrument or instruments made in our name and under the Public Seal of the Colony constitute and appoint to be members thereof. Whenever any such member shall die, or resign his seat in the said Council, or be absent from the Colony, or be lawfully suspended from his office or become from any cause incapable of discharging the duties thereof, the Governor may by any such instrument as aforesaid nominate any other person whom he shall think fit, being within the Colony, to fill any such vacancy.



3 In addition to the members appointed under the preceding clause the Governor may, by an instrument made in our name and under the Public Seal of the Colony, appoint any fit persons residing in the Colony, not exceeding three in number at any one time, to be members of the said Executive Council and summon such additional members to the meetings of the said Executive Council on any occasion on which he shall think it desirable to obtain their advice

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### 3 Additional Powers, Rights and Duties Law, 1932

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2 Wherever by any law in force in the Colony of Cyprus for the time being any power or right is vested in, or any duty is imposed upon, the Legislative Council, whether such power or right is to be exercised or such duty is to be performed, by the Legislative Council in consequence of a resolution thereof or otherwise or by any members thereof, such power or right is hereby vested in and such duty is hereby imposed upon, the Governor and shall be exercised or performed by him as nearly as circumstances may permit in the same manner as they would have been exercised or performed by the Legislative Council or any members thereof, and when so exercised or performed shall be deemed to have full legal validity and effect

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## FALKLAND ISLANDS

1. Letters Patent constituting the Office of Governor and Commander-in Chief and providing for the Government  
—Westminster, February 25, 1892

Text in *State Papers*, Vol LXXXIV, page 262

2. Royal Instructions to the Governor and Commander-in-Chief —St. James's, February 28, 1920

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## 1. Letters Patent, 1892.

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7. In pursuance of the powers vested in us by an Act of Parliament, passed in the session holden in the 50th and 51st years of our reign, intituled "An Act to enable Her Majesty to provide for the Government of her Possessions acquired by Settlement,"<sup>(1)</sup> we do hereby delegate to the persons who shall from time to time compose the said Legislative Council full power and authority, subject always to any conditions, provisoes, and limitations prescribed by any Instructions under our Sign Manual and Signet, to establish such ordinances, not being repugnant to the law of England, and to constitute such courts and officers, and to make such provisions and regulations for the proceedings in such courts and for the administration of justice, as may be necessary for the peace, order, and good government of the Colony.

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## 2. Royal Instructions, 1920.

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4. The Executive Council of the Colony shall consist of the persons for the time being lawfully discharging the functions of Colonial Secretary, of Treasurer, and of Colonial Surgeon, who are hereinafter referred to as "*ex officio* members" and of such other persons as, at the date of the coming into operation of these our Instructions, are members of the said Council, or as we may, from time to time, appoint by any instruction or warrant under our Sign Manual and Signet, or as the Governor, in pursuance of instructions from us through one of our Principal Secretaries of State, may, from time to time, appoint under the Public Seal of the Colony.

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15. The Legislative Council of the Colony shall consist of the Governor for the time being, and the persons for the time being lawfully discharging the functions of Colonial Secretary, and of Treasurer and of Colonial Surgeon of the Colony (who shall be

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<sup>(1)</sup> *State Papers*, Vol. LXXVIII, page 824.

styled "*ex officio* members") and of such other persons as at the date of the receipt of these our Instructions in the Colony are members of the said Council, or as the Governor in pursuance of any instructions from us, through one of our Principal Secretaries of State, shall from time to time appoint by an instrument under the Public Seal of the Colony, or as the Governor shall provisionally appoint as hereinafter provided

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## FIJI

- 1 Royal Instructions to the Governor and Commander-in-Chief—St James's, February 9, 1929.

*Amendment*

ADDITIONAL INSTRUCTIONS

St James's, April 2, 1937

- 2 Letters Patent constituting the Office of Governor and Commander-in-Chief and providing for the Government—Westminster, April 2, 1937

Text in *Statutory Rules and Orders*, 1937, page 2383

1. Royal Instructions, 1929 (as amended 1937).

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4 The Executive Council of the Colony shall consist of the persons for the time being lawfully discharging the functions of the respective offices of Colonial Secretary, Attorney-General, and Colonial Treasurer of the Colony, who shall be styled "*ex officio* members" of the Executive Council, and of such other persons as are now members of the said Council, or as we may from time to time appoint by any Instructions or warrant under our Sign Manual and Signet, or as the Governor, in pursuance of instructions from us, through a Secretary of State, may from time to time appoint by an instrument under the Public Seal of the Colony

Whenever upon any special occasion the Governor desires to obtain the advice of any person within the Colony touching our

affairs therein, he may, by an instrument under the Public Seal of the Colony, summon for such special occasion any such person as an extraordinary member of the Executive Council.

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## 2. Letters Patent, 1937.

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9. There shall be an Executive Council for the Colony, and the said Council shall consist of such persons appointed in such manner as we shall direct by any instructions under our Sign Manual and Signet, or through the Secretary of State, and all such persons shall hold their places in the Council during our pleasure, and subject thereto, for such period and upon such conditions as may be specified in any such instructions.

10. There shall be a Legislative Council for the Colony, and the said Council shall consist of the Governor as president, three *ex officio* members, thirteen official members, five European members, of whom three shall be elected and two nominated, five native members, and five Indian members, of whom three shall be elected and two nominated.

11. The *ex officio* members shall be the persons for the time being lawfully discharging the functions of the respective offices of Colonial Secretary, Attorney-General and Treasurer of the Colony.

12. The official members shall be such persons holding offices of emolument under the Crown in the Colony as the Governor may from time to time by instrument under the Public Seal of the Colony appoint, subject to our disallowance through the Secretary of State.

Every official member shall hold his place in the Council during our pleasure, and shall in any case vacate his seat at the next dissolution of the Council after his appointment, or previously thereto if his appointment shall be disallowed as aforesaid, or if he shall cease to hold office of emolument under the Crown in the Colony. Any such person may, if qualified, again be appointed as an official member.

The Governor shall without delay report to us every appointment of any person as an official member.

13. The European elected members shall be elected by persons duly qualified as European electors as hereinafter provided.

14. For the purpose of the election of European elected members the Colony shall be divided into three electoral divisions to be defined by order of the Governor in Council. One European member shall be elected for each of the said electoral divisions.

15 The European nominated members shall be such persons *not holding any office of emolument under the Crown in the Colony* as the Governor may from time to time by instrument under the Public Seal appoint, subject to our disallowance through the Secretary of State

Every European nominated member shall hold his place in the Council during our pleasure, and shall in any case vacate his seat at the next dissolution of the Council after his appointment or previously thereto if his appointment shall be disallowed as afore said, or if he shall resign his seat or be appointed permanently to an office of emolument under the Crown in the Colony

Any such person may if qualified, again be appointed as a European nominated member

The Governor shall without delay report to us every appointment of any person as a European nominated member

16 The native members shall be appointed as follows —

(1) The Great Council of Native Chiefs in the Colony shall at the meeting held by the said Great Council next following a dissolution of the Legislative Council or when required so to do, submit to the Governor the names of not less than seven, nor more than ten persons being aboriginal natives of the Colony, who are able to speak and understand the English language, and from the persons submitted the Governor shall select five persons who shall upon such selection be and become members of the Legislative Council

Provided that the Governor may, without assigning any reason require the said Great Council to submit the names of other persons qualified as aforesaid in addition to the persons first submitted

(2) The provisions of article 27 (except paragraph (5) thereof) and the first paragraph of article 31 of these Letters Patent with regard to the disqualification of, and vacation of seats by, elected members shall apply, *mutatis mutandis*, to the disqualification of and vacation of seats by, native members, and if a native member's seat become vacant, the Governor may, from the names already submitted under paragraph (1) of this article, select another person to fill the vacant seat. If the Legislative Council be dissolved, the Governor may upon the constitution of a new Council select from the names so submitted any five persons to be members of the Legislative Council. The persons so selected shall be native members of the said Council only until the next meeting of the Great Council of Chiefs following the dissolution of the Legislative Council

17 The Indian elected members shall be elected by persons duly qualified as Indian electors as hereinafter provided

18 For the purpose of the election of Indian elected members the Colony shall be divided into three electoral divisions to be defined by order of the Governor in Council. One member shall be elected for each of the said divisions

19. The Indian nominated members shall be such persons not holding any office of emolument under the Crown in the Colony and being—

(a) sons of parents of Indian descent, and

(b) British subjects, or natives of the territories of any Indian Prince or Chief under our suzerainty exercised through the Governor-General of India or through any Governor or other officer subordinate to the Governor-General of India, as the Governor may from time to time by instrument under the Public Seal appoint, subject to our disallowance through the Secretary of State.

Every Indian nominated member shall hold his place in the Council during our pleasure and shall in any case vacate his seat at the next dissolution of the Council after his appointment or, previously thereto, if his appointment shall be disallowed as aforesaid or if he shall resign his seat or be appointed permanently to an office of emolument under the Crown in the Colony or cease to be qualified for appointment under paragraph (b) of this article.

Any such person may, if qualified, again be appointed as an Indian nominated member.

The Governor shall without delay report to us every appointment of any person as an Indian nominated member.

20. The members of the Legislative Council shall take precedence as we may specially assign and in default thereof as follows :—

First the *ex officio* members in the order in which their respective offices are mentioned above.

Secondly, the official members who are members of the Executive Council according to their seniority therein.

Thirdly, the official members who are not members of the Executive Council according to the priority of their respective appointments as official members, or, if appointed by the same instrument, according to the order in which they are named therein.

Fourthly, the European elected and nominated members according to the length of time during which they have been continuously members of the Legislative Council, members elected or appointed for the first time at the same general election being deemed to have become members of the Council at the same time and taking precedence amongst themselves according to the alphabetical order of their names.

Fifthly, the native members according to the length of time during which they have been continuously members of the Legislative Council, members appointed for the first time at the same general election being deemed to have become members of the Council at the same time and taking precedence according to such order as the Governor shall appoint.

Sixthly, the Indian elected and nominated members according to the length of time during which they have been continuously members of the Legislative Council, members elected or appointed for the first time at the same general election being deemed to have become members of the Council at the same time and taking precedence according to such order as the Governor shall appoint

In determining the period for which any person has been continuously a member of the Council, any interval necessarily following a dissolution of the Council shall be disregarded

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25 No person shall be qualified to be elected as a European elected members of the Council, or, having been so elected, shall sit or vote in the Council, unless at the date of his nomination he—

(1) is qualified to be registered as a European elector, and

(2) has been continuously resident for 2 years in the Colony, and

(3) (a) possesses and has possessed for the preceding 12 months in his own right freehold property in the Colony of the clear value of not less than £500 or of the annual value of not less than £50 over and above all charges and incumbrances affecting the same or

(b) is and has been for the preceding 12 months, in occupation in his own right of freehold or leasehold property in the Colony of the extent of not less than 500 acres, or

(c) rents, and has rented for the preceding 12 months, in his own right freehold or leasehold property in the Colony of the yearly value of not less than £100 or

(d) is in possession of a net annual income in his own right of not less than £200

26 No person shall be qualified to be elected as an Indian elected member of the Council, or having been so elected, shall sit or vote in the Council unless at the date of his nomination he—

(1) is qualified to be registered as an Indian elector, and

(2) has been continuously resident for 2 years in the Colony, and

(3) is able to speak and understand the English language to the satisfaction of the officer prescribed by law for the purpose or on appeal from the decision of that officer, of the Supreme Court, and

(4) (a) has resided in the electoral division for which he is a candidate for the preceding 12 months and is in possession of a net annual income of not less than £120 in his own right, or

(b) is in possession of a net annual income of not less than £150 arising from lands in that division belonging to him in his own right

27. No person shall be qualified to be elected a member of the Council, or, having been elected, shall sit or vote in the Council, who—

(1) has been sentenced by a court in any part of our dominions or in any territory under our protection to death, penal servitude, hard labour for any period, or imprisonment for a period exceeding one year, and has not either suffered the punishment to which he was sentenced or such other punishment as by competent authority may have been substituted for the same or received a free pardon from us ; or

(2) is an undischarged bankrupt, having been declared a bankrupt by a court as aforesaid ; or

(3) has within 5 years before his nomination received relief in the Colony from any public source, except such relief as may be declared by any law for the time being in force in the Colony not to be relief for the purposes of this paragraph ; or

(4) is a lunatic so found and declared under any law in force in the Colony ; or

(5) holds any office of emolument under the Crown within the Colony.

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33. Every male person shall be qualified to be registered as a European elector, and when registered to vote at the election of European elected members of the Council, who at the date on which the electoral roll is closed—

(1) is the son of parents of European descent, or, being the son or lineal descendant of a European father, can read, write and speak the English language ;

(2) is a British subject by birth, or by reason of annexation of territory, or by naturalisation having effect in the Colony ;

(3) is of the age of 21 years or upwards ;

(4) has been continuously resident in the Colony for the preceding 12 months ; and

(5) is in possession in his own right either—

(a) of freehold or leasehold property, or both, within the Colony, of the total yearly value of not less than £20 over and above all charges and incumbrances affecting the same ; or

(b) of a net annual income of not less than £120.

Provided that no person holding any office of emolument under the Crown in the Colony shall be qualified as aforesaid.

34. Every male person shall be qualified to be registered as an Indian elector and when registered to vote at the election of Indian elected members of the Council, who at the date on which the electoral roll is closed—

(1) is the son of parents of Indian descent ;



(2) is a British subject, or a native of the territories of any Indian Prince or Chief under our suzerainty exercised through the Governor-General of India or through any Governor or other officer subordinate to the Governor-General of India ;

(3) is of the age of 21 years or upwards ,

(4) has been continuously resident in the Colony for the preceding 12 months ,

(5) can read and write a simple sentence and sign his name in any one of the following languages to the satisfaction of the officer charged with the duty of registering electors —

English,  
Hindu,  
Urdu,  
Tamil  
Telugu,  
Gurmukhi,  
Gujarati , and

(6) has, for the preceding 6 months—

(a) been in possession in his own right of freehold or leasehold property in the Colony of a total yearly value of not less than £5 over and above all charges and incumbrances affecting the same , or

(b) been in possession in his own right of a net annual income of not less than £75 , or

(c) been, and remains, the holder in his own right of a Government or municipal licence issued under any ordinance, the annual cost of the licence being not less than £5

Provided that no person holding any office of emolument under the Crown in the Colony shall be qualified as aforesaid

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43 The Governor, if present, or, in the absence of the Governor, such member of the Legislative Council as the Governor shall from time to time appoint, or in default of such appointment the member present who stands first in order of precedence, shall preside at the meetings of the Council The Governor, or any member for the time being presiding at a meeting of the Council, shall have a casting vote, but not an original vote

44 Subject to the provisions of article 43 of these Letters Patent, all questions arising at meetings of the Legislative Council shall be determined by a majority of the votes of all the members present

Provided that the Governor may disallow any vote or resolution of the Council, and any vote or resolution so disallowed shall have no force or effect.

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## GAMBIA COLONY and PROTECTORATE

1. Letters Patent constituting the Office of Governor and Commander-in-Chief of the Colony and providing for the Government thereof.—Westminster, February 27, 1915.

Text in *Statutory Rules and Orders*, 1915, Vol. III, page 310.

2. Royal Instructions to the Governor and Commander-in-Chief.—St. James's, February 27, 1915.

### *Amendment*

ADDITIONAL INSTRUCTIONS :

St. James's, June 26, 1928.

3. Order in Council providing for the Exercise of Jurisdiction in Territories adjacent to the Colony.—Windsor, November 23, 1893.

Text in *State Papers*, Vol. LXXXV, page 1251.

*See also* WEST AFRICA

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1. Letters Patent, 1915.

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6. There shall be an Executive Council in and for the Colony, and the said Council shall consist of such persons as we shall direct by Instructions under our Sign Manual and Signet, and all such persons shall hold their places in the said Council during our pleasure. The Governor may upon sufficient cause to him appearing suspend from the exercise of his functions in the Council any member thereof pending the signification of our pleasure, giving immediate notice to us through one of our Principal Secretaries of State. If the suspension is confirmed by us through one of our Principal Secretaries of State the Governor shall forthwith by an instrument under the Public Seal of the Colony revoke the appointment of such member, and thereupon his seat in the Council shall become vacant.

7 There shall be a Legislative Council in and for the Colony, and the said Council shall consist of the Governor and such persons, not being less than two at any time, as we shall direct by any Instructions under our Sign Manual and Signet, and all such persons shall hold their places in the said Council during our pleasure. The Governor may upon sufficient cause to him appearing suspend from the exercise of his functions in the Council any member thereof pending the signification of our pleasure, giving immediate notice to us through one of our Principal Secretaries of State. If the suspension is confirmed by us through one of our Principal Secretaries of State the Governor shall forthwith by an instrument under the Public Seal of the Colony revoke the appointment of such member, and thereupon his seat in the Council shall become vacant.

8 The persons who shall from time to time compose the said Legislative Council shall have full power and authority, subject always to any conditions, provisoes, and limitations prescribed by any Instructions under our Sign Manual and Signet, to establish such ordinances, and to constitute such courts and officers, and to make such provisions and regulations for the proceedings in such courts and for the administration of justice, as may be necessary for the peace, order, and good government of the Colony.

The Governor shall have a negative voice in the making and passing of all such ordinances

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## 2 Instructions, 1915 (as amended 1928).

\* \* \*

4 The Executive Council of the Colony shall consist of the following members, that is to say the person for the time being lawfully discharging the functions of Colonial Secretary, who shall be styled "*an ex officio*" member of the Executive Council, and such other persons as are at the date of the coming into force of our said Letters Patent<sup>(1)</sup> members of the said Council or as we may from time to time appoint by any instructions or warrant under our Sign Manual and Signet, or as the Governor in pursuance of instructions from us through one of our Principal Secretaries of State may from time to time appoint under the Public Seal of the Colony.

Whenever upon any special occasion the Governor desires to obtain the advice of any person within the Colony touching our affairs therein he may, by an instrument under the Public Seal of the Colony, summon for such special occasion any such person as an extraordinary member of the Executive Council.

\* \* \*

15. The Legislative Council of the Colony shall consist of the Governor, the person for the time being lawfully discharging the functions of Colonial Secretary, who shall be styled "an *ex officio* member" of the Legislative Council, and such other persons holding office in the Colony as at the date of the coming into force of the above-recited Letters Patent are members of the Legislative Council or as the Governor, in pursuance of instructions from us, through one of our Principal Secretaries of State, may from time to time appoint under the Public Seal of the Colony, and all such persons shall be styled "official members" of the Legislative Council; and further of such persons, not holding office in the Colony, as at the coming into force of the above-recited Letters Patent are members of the said Legislative Council or as the Governor, in pursuance of any instructions from us, through one of our Principal Secretaries of State, may from time to time appoint by an instrument under the Public Seal of the Colony, and all such persons shall be styled "unofficial members" of the Legislative Council.

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### 3. Order in Council, 1893.

*At the Court at Windsor, the 23rd day of November, 1893.*

*Present:—THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL.*

*Whereas by "The Foreign Jurisdiction Act, 1890,"<sup>(1)</sup> it was amongst other things enacted that it should be lawful for Her Majesty to hold, exercise, and enjoy any jurisdiction which Her Majesty then had, or might at any time thereafter have, within a foreign country, in the same and as ample a manner as if Her Majesty had acquired that jurisdiction by the cession or conquest of territory.*

*And whereas by certain Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster, the 28th day of November, 1888,<sup>(2)</sup> Her Majesty's Settlement on the Gambia was erected into a separate Colony, under the title of "the Colony of the Gambia," and by the said Letters Patent a Legislative Council was appointed for the said Colony of the Gambia, with certain powers and authority to legislate for the said Colony as by the said Letters Patent will more fully appear.*

<sup>(1)</sup> *State Papers*, Vol. LXXXII, page 656.

<sup>(2)</sup> *Ibid.*, Vol. LXXXI, page 140.

*And whereas Her Majesty hath acquired jurisdiction within divers foreign countries on the West Coast of Africa, near or adjacent to Her Majesty's said Colony of the Gambia, and it is expedient to determine the mode of exercising such jurisdiction*

*Now, therefore, Her Majesty is pleased, by and with the advice of her Privy Council, to order as follows —*

1 It shall be lawful for the Legislative Council for the time being of the Colony of the Gambia, by ordinance or ordinances, to exercise and provide for giving effect to all such jurisdiction as Her Majesty may at any time before or after the passing of this Order in Council, have acquired in the said territories adjacent to the Colony of the Gambia <sup>(1)</sup>

2 The Governor for the time being of the Colony of the Gambia shall have a negative voice in the passing of all such ordinances as aforesaid. And the right is hereby reserved to Her Majesty, Her heirs and successors, to disallow any such ordinances as aforesaid, in whole or in part such disallowance being signified to the said Governor through one of Her Majesty's Principal Secretaries of State, and also to make and establish from time to time, with the advice and consent of Parliament, or with the advice of her or their Privy Council all such laws or ordinances as may to her or them appear necessary for the exercise of such jurisdiction as aforesaid as fully as if this Order in Council had not been made

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## GIBRALTAR

- 1 Letters Patent constituting the Office of Governor and Commander-in-Chief — Westminster, September 12, 1922

Text in *Statutory Rules and Orders*, 1922, page 1132

- 2 Royal Instructions to the Governor and Commander-in-Chief — St James's, September 12, 1922

Text in *Laws of Gibraltar*, Revised Edition, 1935,  
Vol III, page 2507

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<sup>(1)</sup> Such provision was made by 'The Protectorate Ordinance,' April 21 1935 (Ordinance No 2 of 1935)

## 1. Letters Patent, 1922.

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6. And we do hereby give and grant to the Governor full power and authority to make laws for the peace, order, and good government of the City and Garrison: provided, nevertheless, that any such law or any part thereof may be disallowed by us by any Order in Council, or through one of our Principal Secretaries of State, and shall cease to be of any force or effect as soon as the disallowance thereof shall be published by the Governor in the City and Garrison: provided also, that nothing herein contained shall affect our right by any Order in Council to make from time to time all such laws as may appear to us necessary for the peace, order, and good government of the City and Garrison.

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## 2. Royal Instructions, 1922.

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5. The Executive Council of the City and Garrison shall be composed of the following members, that is to say, the combatant military officer next in seniority after the Governor, and the persons lawfully discharging the functions of Colonial Secretary, of Attorney-General and of Treasurer of the City and Garrison, who shall be styled "*ex officio* members" of the Executive Council, and of such fit persons residing in the City and Garrison, but not holding office in the service of the Government thereof, and not exceeding three in number at any one time, as the Governor in pursuance of any instructions from us or through one of our Principal Secretaries of State may from time to time appoint by an instrument under the Public Seal of the City and Garrison, and such persons shall be styled "unofficial members" of the Executive Council. The Governor shall summon such unofficial members to the meetings of the Executive Council only on occasions on which he shall deem it desirable to obtain their advice, and meetings of the Executive Council shall be held to be duly constituted notwithstanding that the said unofficial members may not have been summoned thereto.

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25. It being our intention that all persons inhabiting the City and Garrison should have full liberty of conscience and the free exercise of their respective modes of religious worship, we do hereby require the Governor to permit all persons within the City and Garrison to have such liberty, and to exercise such modes of religious worship, provided they be content with a quiet and peaceable enjoyment of the same, not giving offence or scandal to the Government.

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## GOLD COAST

- 1 Order in Council providing for the Constitution of a Legislative Council—Whitehall, April 8, 1925

Text in *State Papers* Vol CXXI page 208

*Amendments*

ORDERS IN COUNCIL

London February 7 1927                      Text in *State Papers* Vol CXXVI page 27

London June 26 1933                      Text in *Statutory Rules and Orders* 1933, page 2093

London November 9 1934                      Text in *Statutory Rules and Orders* 1934 Vol II, page 762

- 2 Letters Patent constituting the Office of Governor and Commander-in-Chief and providing for the Government—Westminster, May 23, 1925

Text in *Statutory Rules and Orders* 1925 page 1761

*Amendment*

LETTERS PATENT

Westminster November 23 1934                      Text in *Statutory Rules and Orders* 1934 Vol II page 766

- 3 Royal Instructions to the Governor and Commander in Chief—St James's, May 23 1925

Text in *Laws of the Gold Coast* Revised Edition 1937 Vol IV page 17

*Amendment*

ADDITIONAL INSTRUCTIONS

St James's November 23 1934                      Text in *Laws of the Gold Coast* Revised Edition 1937 Vol IV page 25

St James's, July 12 1937

- 4 Ordinance of the local Legislature making Provision for Native Administration and Provincial Councils—1927 (as amended to September 18, 1937)

Text, as amended to March 28 1936 in *Laws of the Gold Coast*, Revised Edition, 1937, Vol II, cap 76

5. Order in Council providing for the Enactment of Ordinances for the Colony, Ashanti and the Northern Territories.—London, November 9, 1934.

Text in *Statutory Rules and Orders*, 1934, Vol. II, page 763.

See also WEST AFRICA

.. .. .

1. Legislative Council Order in Council, 1925 (as amended 1927, 1933 and 1934).

\* \* \*

3. The Council shall consist of the Governor, as president, together with fifteen official members and fourteen unofficial members.

4. The official members of the Council shall be the following persons :—

(1) The *ex officio* members for the time being of the Executive Council of the Colony other than the Chief Commissioner of Ashanti and the Chief Commissioner of the Northern Territories of the Gold Coast ;

(2) The officers for the time being lawfully discharging the functions of the respective offices of—

- (a) Comptroller of Customs ;
- (b) Director of Public Works ;
- (c) General Manager of the Railway ;
- (d) Commissioner of the Eastern Province ;
- (e) Commissioner of the Central Province ;
- (f) Commissioner of the Western Province ;
- (g) Director of Agriculture ;
- (h) Director of Education ; and

(3) Such other persons holding public office under the Crown in the Colony and not exceeding two in number at any one time as the Governor may from time to time nominate and appoint by an instrument under the Public Seal of the Colony subject to confirmation or disallowance by His Majesty signified through a Secretary of State.

The persons referred to under heads (1) and (2) of this clause shall be styled "*ex officio* members" of the Council, and those referred to under head (3) of this clause shall be styled "nominated official members" of the Council.

\* \* \*



8 The unofficial members of the Council shall consist of the following —

(1) Six provincial members, namely, three for the Eastern Province, two for the Central Province, and one for the Western Province,

(2) Three municipal members, namely, one each for the towns of Accra, Cape Coast and Seccondee, respectively, and

(3) Five European unofficial members, namely —

(a) One representative of the firms which for the time being are members of a recognised Chamber of Commerce in the Colony, such representative to be styled "the mercantile member",

(b) A representative of the mining industry in the Colony, such representative to be styled "the mining member", and

(c) Three European unofficial members to be nominated and appointed by the Governor by an instrument under the Public Seal of the Colony subject to confirmation or disallowance by His Majesty signified through a Secretary of State

\* \* \*

10 No woman shall be disqualified by sex or marriage from exercising the political franchise under this Order, or from being elected, nominated, or appointed, to serve as a member of the Council

\* \* \*

16 (1) There shall be established in each Province of the Colony a Council which shall be called "the Provincial Council," and which shall consist of the Head Chiefs whose headquarters are situated within the Province. Provided that for the purposes of this Order those Chiefs only shall be deemed to be Head Chiefs who, in the opinion of the Governor, are Chiefs not subordinate in their ordinary jurisdiction to any other Chief, and whom the Governor shall from time to time by an instrument under his hand declare to be recognised Head Chiefs for the purposes of this Order

(2) The Governor shall have power to vary, alter, amend, or revoke any such instrument

(3) The validity of the contents or provisions of any such instrument, variation, alteration, amendment, or revocation, shall not be liable to be impugned in any court of law or otherwise. Provided that any Chief who has not in manner as aforesaid been declared to be a recognised Head Chief and who claims to be so declared may present his case for recognition to the proper Provincial Council for consideration, and the Provincial Council shall in due course submit its recommendations in the matter to the Provincial Commissioner for the information of the Governor

(4) The Provincial Councils of the Central and Western Provinces shall each form one undivided body ; but the Provincial Council of the Eastern Province shall be divided into three sections, namely :—

(a) The Ga Adangme Section, comprising the divisions of Adangme, Ga Yilo Krobo, Manya Krobo, Osudoku, and Shai ;

(b) The Eve Section, comprising the divisions of Awuna and Peki ;

(c) The Akan Section, comprising the divisions of Akim, Abuakwa, Akwapim, Akwamu, Kwahu, and New Juaben.

(5) (a) A Head Chief who is unable to attend any particular session of the Provincial Council may send as his accredited representative a person selected from among the following : Ohene ; Manche ; Fia ; Asafohenega ; Asafoietsenwa ; Mankrado ; Mankralo ; Tufuhene ; Awadada ; Chief Linguist.

(b) Any such representative shall for the purposes of such session enjoy the same powers and be charged with the like duties and obligations as a member of the Provincial Council in like manner as if he were the Head Chief whose representative he is. Provided always that he shall not be eligible for election as a representative of the Provincial Council to serve as a provincial member of the Legislative Council.

(6) (a) A Head Chief who has been deposed under the provisions of any law which may for the time being be in force in the Colony or who has resigned from such position shall, as from the date of his deposition or resignation, as the case may be, cease to be a member of the Provincial Council and his seat shall thereupon become vacant.

(b) A Head Chief who has been suspended from such position under the provisions of any law which may for the time being be in force in the Colony shall, during the period of his suspension, not sit or vote or take any part whatsoever in the proceedings of the Provincial Council.

(7) In the case of a vacancy of the stool of a Head Chief entitled to be a member of a Provincial Council, the rights of the Head Chief of such stool to attend the Provincial Council and to vote for the election of a representative to serve as a provincial member of the Council shall be in abeyance until the election and installation of a Head Chief to fill the vacancy shall have been confirmed by the Governor under section 3 of " The Chiefs' Ordinance."

17. Every Provincial Council shall be charged with the duty of electing from among its members in accordance with the provisions of this Order a representative or representatives of the Provincial Council to serve as a provincial member or as provincial members of the Council ; and the Provincial Councils may also discharge such

other functions as may from time to time be assigned to them by ordinance. Provided that in the case of the Eastern Province, if a vacancy shall occur in respect of one or two only of the sections of the Provincial Council, it shall not be necessary to convene the whole Provincial Council but it shall be sufficient to convene only the section or sections immediately concerned, and such section or sections so convened shall have full power to elect its or their representative or representatives to serve on the Council as aforesaid.

18 (1) Each member of the Provincial Council shall have one vote for every unit of 10 000 inhabitants (or part of such unit, not being less than 5 000 inhabitants) in his division, the population being deemed for the purpose of this clause to be that recorded at the most recent official published census. Provided that, in the case of a division with a population of less than 5 000 inhabitants, the Head Chief shall have one vote.

(2) The Provincial Council of the Western Province shall elect one representative to serve as a provincial member of the Council, and the Provincial Council of the Central Province shall elect two representatives to serve as provincial members of the Council, and each section of the Provincial Council of the Eastern Province shall elect one representative to serve as a provincial member of the Council.

(3) No person shall be eligible for election as a representative of a Provincial Council to serve as a Provincial member of the Council unless he is certified in writing by the Provincial Commissioner to be able to read and speak the English language sufficiently well to enable him to take an active and intelligent part in the proceedings of the Council.

(4) On the election of a representative being made, the president of the Provincial Council (or in the case of the Eastern Province the president of the proper section of the Provincial Council) shall report to the Provincial Commissioner the name of the representative elected. The Provincial Commissioner shall communicate the report to the Governor, and such representative shall become a member of the Council as from the date of his election.

(5) (a) Should there be no Head Chief or an insufficient number of Head Chiefs qualified for election as a representative or as representatives by the Provincial Council (or, in the case of the Eastern Province, by the proper section of the Provincial Council), or should the Provincial Council (or, in the case of the Eastern Province, any section of the Provincial Council), be unable or fail to elect a qualified representative or qualified representatives as the case may be, then and in any such case the Governor shall have power to nominate the necessary number of Head Chiefs to serve as provincial members of the Council.

(b) If the result of the voting is that two or more candidates head the poll with an equality of votes, one re-vote shall be taken ; and, if on the re-vote two or more candidates head the poll with an equality of votes, then and in any such case the Governor shall have power to fill the vacancy by nominating from among those so heading the poll on the re-vote the necessary number of Head Chiefs to serve as provincial members. Provided that in the case of the Central Province, when there are two vacancies to be filled, if two candidates head the poll with an equality of votes, both shall be deemed to be elected, and that, if three or more candidates head the poll with an equality of votes, one re-vote shall be taken. If on such re-vote three or more candidates head the poll with an equality of votes, then and in any such case the Governor shall have power to fill the vacancy by nominating from among those so heading the poll on the re-vote the necessary number of Head Chiefs to serve as provincial members.

Provided that the Governor shall in no case nominate a Head Chief to serve as a provincial member of the Council whom the Provincial Commissioner does not certify in writing to be able to read and speak the English language sufficiently well to enable him to take an active and intelligent part in the proceedings of the Council.

(6) The certification by the Provincial Commissioner hereinabove in this clause referred to shall be in the free and exclusive discretion of the Provincial Commissioner.

19. (1) A provincial member of the Council who has been deposed under the provisions of any law which may for the time being be in force in the Colony or who has resigned from the position of Head Chief shall, as from the date of his deposition or resignation, as the case may be, cease to be a member of the Council, and his seat shall thereupon become vacant.

(2) A provincial member of the Council who has been suspended from the position of Head Chief under the provisions of any law which may for the time being be in force in the Colony shall, during the period of his suspension, not sit or vote or take any part whatsoever in the proceedings of the Council.

20. (1) The towns of Accra, Cape Coast and Secondee shall each be represented by one municipal member in the Council.

(2) In the case of each of the aforementioned towns, the representative shall be elected by the electorate of the town ; the electorate for this purpose coinciding with the electorate for the time being for the purpose of the election of a member of the Municipal Council. Provided always that if only one person is nominated as a candidate for election, such person shall be deemed to be elected.

(3) In the case of the election of a municipal member, the returning officer shall report to the Governor the name of the

representative elected and such representative shall become a member of the Council as from the date of his election

21 (1) For the purposes of the election of the mercantile member of the Council those bodies only shall be deemed to be recognised Chambers of Commerce which the Governor shall from time to time by an instrument under his hand declare to be recognised Chambers of Commerce for the said purposes

(2) The Governor shall have power to vary alter amend or revoke any such instrument

(3) The validity of the contents or provisions of any such instrument variation alteration amendment or revocation shall not be liable to be impugned in any court of law or otherwise

(4) Whenever an occasion occurs for the election of the mercantile member of the Council every firm which is a member of a recognised Chamber of Commerce may subject as in sub clause (6) of this clause provided nominate one of its officers (who shall be a European) to be a member of a Committee which shall be styled the Mercantile Electoral Committee and which is hereinafter in this clause referred to as the Committee Provided that in the case of a firm constituted by only one person such person shall be deemed to be nominated to be and shall be a member of the Committee

(5) The Committee shall be constituted by the persons who have been nominated or who are deemed to have been nominated to be members of the Committee as aforesaid Provided that the president or officiating president of the Accra and Eastern Provinces (Gold Coast) Chamber of Commerce shall be *ex officio* a member of and president of the Committee and that whether or not he has been nominated or is deemed to have been nominated as aforesaid to be a member of the Committee

(6) No firm shall be entitled to nominate more than one representative to be a member of the Committee and if the president or officiating president of the Accra and Eastern Provinces (Gold Coast) Chamber of Commerce has not been nominated under the provisions of sub clause (4) of this clause then and in such case the firm of which he is an officer shall not be entitled to nominate a representative to be a member of the Committee

(7) The duty and function of the Committee shall be to elect a representative of the recognised Chambers of Commerce of the Colony to be and serve as the mercantile member of the Council

(8) For the purposes of the said election the Committee shall subject always to the provisions of any regulations to be made under clause 48 of this Order which shall for the time being be in force in that regard regulate its proceedings in such manner as to it shall seem convenient and proper

(9) On the election being made, the president of the Committee shall report the name of the representative elected to the Governor ; and such representative shall become a member of the Council as from the date of his election.

22. (1) Subject as hereinafter in this clause provided, the Gold Coast Chamber of Mines shall have power to elect one of its members (being a European) to be the representative of the mining industry in the Colony to serve as the mining member of the Council ; and for the purposes of such election the said Chamber may regulate its proceedings in such manner as to it shall seem convenient and proper.

(2) On the election being made, the secretary of the said Chamber shall report the name of the representative elected to the Governor ; and such representative shall become a member of the Council as from the date of his election.

(3) Notwithstanding the provisions hereinabove in this clause declared, the operation of the said provisions shall be suspended until such time as the Gold Coast Chamber of Mines shall make an application to the Governor to put the said provisions into operation. On such application being made, and on the Governor approving the same, the said provisions shall thereupon come into operation with effect from the time when the next ensuing vacancy shall occur in the office of mining member of the Council. And until then the mining member of the Council shall be nominated and appointed by the Governor by an instrument under the Public Seal of the Colony subject to confirmation or disallowance by His Majesty signified through a Secretary of State.

23. No person shall be eligible for election as a municipal member of the Council, or having been elected, shall sit or vote as such in the Council, who—

(1) is not qualified as a voter under " The Town Councils Ordinance."

(2) is not able competently to speak, read, and write the English language ;

(3) is not possessed of property to the value of £250 sterling ;

(4) has not been ordinarily resident in the town for at least 5 years prior to the date of election ;

(5) is not of the age of at least 25 years ;

(6) has been sentenced by any competent British court (whether of the Colony or not) for any crime punishable by death, or by imprisonment with hard labour for a period exceeding one year, and has not received a free pardon from His Majesty or in His Majesty's name for the crime for which he has been sentenced ;

(7) has been disqualified from practising as a legal or medical practitioner by the order of any competent authority ;

(8) is of unsound mind ; or

(9) is in receipt of salary payable out of the public revenue of the Colony

24 No person shall be eligible for election as the mercantile member or as the mining member of the Council, or having been elected, shall sit or vote as such in the Council, who—

(1) is not a European ,

(2) is not a British subject ,

(3) has not been resident in the Colony for an aggregate period of 2 out of the 3 years preceding the nomination or election ,

(4) is not of the age of at least 25 years ,

(5) has been sentenced by any competent British court (whether of the Colony or not) for any crime punishable by death, or by imprisonment with hard labour for a period exceeding one year, and has not received a free pardon from His Majesty or in His Majesty's name for the crime for which he has been sentenced ,

(6) has been disqualified from practising as a legal or medical practitioner by the order of any competent authority , or

(7) is an undischarged bankrupt

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### 3 Royal Instructions, 1925 (as amended 1934 and 1937)

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4 The Executive Council of the Colony shall consist of the following members, that is to say —the persons for the time being lawfully discharging the functions of Colonial Secretary, of Chief Commissioner of Ashanti, of Chief Commissioner of the Northern Territories of the Gold Coast, of Attorney General, of Financial Secretary, of Director of Medical Services, and of Secretary for Native Affairs of the Gold Coast, who shall be styled "*ex officio* members" of the Executive Council and such other persons as may, from time to time, be appointed by any instruction or warrant under the Royal Sign Manual and Signet, or as the Governor, in pursuance of instructions from us through one of our *Principal Secretaries of State*, may, from time to time, appoint by an instrument under the Public Seal of the Colony. Provided that if any person holding public office under the Crown in the Gold Coast, who is, or may be appointed to be, a member of the Council, shall cease to hold such office, his seat in the Council shall thereupon become vacant

Whenever upon any special occasion the Governor desires to obtain the advice of any person within the Colony touching our affairs therein, he may, by an instrument under the Public Seal of the Colony, summon for such special occasion any such person as an extraordinary member of the *Executive Council*

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#### 4. Native Administration Ordinance, 1927 (as amended to 1937).

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97. (1) A Provincial Council shall have and may exercise the jurisdiction in terms assigned to it by this ordinance.

(2) A Provincial Council shall have jurisdiction to hear and determine any cause, matter, question or dispute—

(a) of a constitutional nature arising between a Chief (which expression for the purposes of this sub-section shall mean a Paramount Chief, Divisional Chief or Chief) of one State and a Chief of another State in the Province ;

(b) relating to the ownership, possession or occupation of lands, or to jurisdiction arising between a Chief of one State and a Chief of another State in the Province ;

(c) referred to it by the Governor for hearing and determination.

97A. If a Provincial Council for any reason is unable to or fails to decide any cause, matter, question or dispute arising under paragraph (a) of section 97 the Governor may, upon the application of the Provincial Council or of his own motion, appoint a committee of enquiry consisting of three persons, of whom at least two shall be Paramount Chiefs, to enquire into the subject-matter of the cause, matter, question or dispute, and such committee shall enquire into the same and shall submit through the Provincial Commissioner a report to the Governor, whose decision thereon shall be final and conclusive.

98. (1) Three Head Chiefs, one of whom may be represented by an accredited representative (being one of the class of persons mentioned in clause 16 (5) (a) of "The Gold Coast (Legislative Council) Order in Council, 1925 " (1) ; that is to say, an Ohene, a Manche, a Fia, an Asafohenega, an Asafoitsenwa, a Mankrado, a Mankralo, a Tufuhene, an Awadada or a Chief Linguist), shall form a quorum for the purposes of the functions of a Provincial Council under this ordinance.

\* \* \*

99. (1) A Provincial Council may from time to time appoint from among its members any number of bodies each of which shall be called a "judicial committee" and which shall have jurisdiction to hear and determine such causes and matters within the jurisdiction conferred upon a Provincial Council by this ordinance as may be assigned to the judicial committee by the Provincial Council for hearing and determination.

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100 In hearing and determining causes and matters under this ordinance a Provincial Council and a judicial committee shall be guided by native customary law

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## 5. Ordinances Order in Council, 1934.

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3 It shall be lawful for the Governor with the advice and consent of the Council from time to time by ordinance to provide for the peace, order, and good government of the Colony and Ashanti, and of all persons therein, provided as follows —

(a) That such ordinances shall be subject to the advice and consent of the Council only so far as the provisions thereof relate to the Colony, and such ordinances shall be expressed to be enacted by the Governor of the Gold Coast with the advice and consent of the Council, so far as the provisions thereof relate to the Colony and the provisions of "The Gold Coast Colony (Legislative Council) Order in Council, 1925,"<sup>(1)</sup> or any Order or Orders in Council adding to, amending or substituted for the same relating to the making and establishing of ordinances by the Governor of the Gold Coast with respect to the Colony, shall apply to such ordinances,

(b) That subject to the foregoing proviso the provisions of "The Ashanti Order in Council 1934,"<sup>(2)</sup> relating to the making and establishing of ordinances by the Governor of the Gold Coast with respect to Ashanti shall apply to all ordinances made under the authority of this article in all respects as if they were made under the authority of the said "Ashanti Order in Council, 1934"

4 It shall be lawful for the Governor with the advice and consent of the Council from time to time by ordinance to provide for the peace, order and good government of the Gold Coast and of all persons therein, provided as follows —

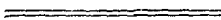
(a) That such ordinances shall be subject to the advice and consent of the Council only so far as the provisions thereof relate to the Colony, and such ordinances shall be expressed to be enacted by the Governor of the Gold Coast, with the advice and consent of the Council, so far as the provisions thereof relate to the Colony, and the provisions of "The Gold Coast Colony (Legislative Council) Order in Council, 1925," or any Order or Orders in Council adding to, amending or substituted for the same, relating to the making and establishing of ordinances by the Governor of the Gold Coast with respect to the Colony, shall apply to such ordinances,

(b) That subject to the foregoing proviso the provisions of "The Ashanti Order in Council, 1934," relating to the making and

establishing of ordinances by the Governor of the Gold Coast with respect to Ashanti, and the provisions of "The Northern Territories Order in Council, 1934,"<sup>(1)</sup> relating to the making and establishing of ordinances by the Governor of the Gold Coast with respect to the Northern Territories, shall apply to all ordinances made under the authority of this article in all respects as if they were made under the authority of the said Orders in Council respectively.

5. Nothing in this Order contained shall be construed to diminish or affect the powers of making ordinances conferred upon the Governor with the advice and consent of the Council with respect to the Colony, and upon the Governor with respect to Ashanti or with respect to the Northern Territories or with respect to Togoland under British Mandate, or to confer upon the Council the power of making any ordinance affecting Ashanti or the Northern Territories or Togoland under British Mandate, save as provided in the two immediately preceding articles or upon the Governor, without the advice and consent of the Council, of making any ordinance affecting the Colony.

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## ASHANTI

1. Order in Council making Provision for the Administration.—London, November 9, 1934.

Text in *Statutory Rules and Orders*, 1934, Vol. II, page 749.

2. Royal Instructions to the Governor and Commander-in-Chief of the Gold Coast.—St. James's, November 23, 1934.

*See also* No. 5 under GOLD COAST

.. .. .

- i. Order in Council, 1934.

\* \* \*

4. The Governor of the Gold Coast Colony is hereby authorised, empowered and commanded to exercise on His Majesty's behalf all such powers and jurisdiction as His Majesty has had or now has within Ashanti and to that end may take or cause to be taken all

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(1) Page 470.

such measures, and may do or cause to be done all such matters and things therein as are lawful, and as in the interest of His Majesty's service he may think expedient, subject to such instructions as he may from time to time receive from His Majesty or through a Secretary of State

5-7 [Identical, *mutatis mutandis*, with the same articles of 'The Northern Territories Order in Council, 1934' see *infra*]

## NORTHERN TERRITORIES (GOLD COAST) PROTECTORATE

- 1 Order in Council making Provision for the Administration —London, November 9, 1934

Text in *Statutory Rules and Orders*, 1934 Vol I, page 653

- 2 Royal Instructions to the Governor and Commander-in-Chief of the Gold Coast Colony —St James's, November 23, 1934

*See also* No 5 under GOLD COAST

### I Order in Council, 1934

\* \* \*

4 The Governor of the Gold Coast Colony is hereby authorised, empowered and commanded to exercise on His Majesty's behalf all such powers and jurisdiction as His Majesty at any time before or after the date of this Order had or may have within the Northern Territories and to that end may take or cause to be taken all such measures, and may do or cause to be done all such matters and things therein as are lawful and as in the interest of His Majesty's service he may think expedient, subject to such instructions as he may from time to time receive from His Majesty or through a Secretary of State

5 The Governor may appoint a Chief Commissioner and all such judges, commissioners, justices of the peace and other necessary officers as may be lawfully appointed by His Majesty, all of whom unless otherwise provided by law shall hold their offices during His Majesty's pleasure

6. The Executive Council of the Gold Coast Colony shall be and be deemed to be the Executive Council of the Northern Territories.

7. In the exercise of the powers and authorities hereby conferred upon him, the Governor may, amongst other things, from time to time by ordinance provide for the administration of justice, the raising of revenue, and generally for the peace, order and good government of the Northern Territories, and of all persons therein, including the prohibition and punishment of acts tending to disturb the public peace.

The Governor, in issuing such ordinances, shall respect any native laws by which the civil relations of any native Chiefs, tribes or populations under His Majesty's protection are now regulated, except so far as the same may be incompatible with the due exercise of His Majesty's power and jurisdiction, or clearly injurious to the welfare of the said natives.

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## TOGOLAND UNDER BRITISH MANDATE

Order in Council providing for the Administration as Part of the Gold Coast Colony and the Northern Territories of the Gold Coast.—London, October 11, 1923.

Text in *State Papers*, Vol. CXVII, page 116.

### *Amendments*

#### ORDERS IN COUNCIL :

London, March 17, 1932 .. .. Text in *State Papers*, Vol. CXXXV, page 80.

London, November 9, 1934.. .. Text in *Statutory Rules and Orders*, 1934, Vol. I, page 659.

.. ..

Order in Council, 1923 (as amended 1932 and 1934).

*At the Court at Buckingham Palace, the 11th day of October, 1923.*

*Present :* THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL.

Whereas by article 119 of the treaty of peace with Germany signed at Versailles on 28th day of June, 1919,<sup>(1)</sup> Germany renounced

(1) *State Papers*, Vol. CXII, page 1.

in favour of the Principal Allied and Associated Powers all her rights over her oversea possessions, including therein Togoland

And whereas the Principal Allied and Associated Powers agreed that the Governments of France and Great Britain should make a joint recommendation to the League of Nations as to the future of the said territory

And whereas the Governments of France and Great Britain made a joint recommendation to the Council of the League of Nations that a mandate to administer, in accordance with article 22 of the Covenant of the League of Nations,<sup>(1)</sup> the territory consisting of that part of Togoland lying to the west of the line agreed upon in the declaration made on the 10th day of July, 1919,<sup>(2)</sup> signed by the Right Honourable Viscount Milner, G C B, G C M G (now K G, G C B G C M G), one of His Majesty's Principal Secretaries of State and by Monsieur Henry Simon, Minister for the Colonies of the French Republic, should be conferred upon His Majesty

And whereas the Governments of France and Great Britain proposed that the mandate<sup>(3)</sup> should be formulated in certain terms

And whereas His Majesty has agreed to accept the mandate in respect of the said territory, and has undertaken to exercise it on behalf of the League of Nations in accordance with the terms of the mandate

And whereas on the 20th day of July, 1922, the Council of the League of Nations confirmed the said mandate and defined its terms

And whereas it is provided by article 9 of the said mandate that the mandatory shall have full powers of administration and legislation in the area subject to the mandate and that this area (hereinafter in this Order called 'Togoland under British Mandate') shall be administered in accordance with the laws of the mandatory as an integral part of his territory and subject to the provisions of the mandate, and that the mandatory shall be at liberty to apply his laws to the territory subject to the mandate with such modifications as may be required by local conditions and to constitute the territory into a customs, fiscal or administrative union or federation with the adjacent territories under his sovereignty or control, provided always that the measures adopted to that end do not infringe the provisions of the mandate

And whereas Togoland under British Mandate is adjacent to the Gold Coast Colony and the Northern Territories of the Gold Coast, and it is expedient that it shall, subject to the provisions of the mandate, be administered as hereinafter provided, and shall be constituted into a customs, fiscal and administration union with the adjacent territories aforesaid

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(1) *State Papers* Vol CXII, page 13

(2) *Ibid* Vol CXVI page 828

(3) *Ibid*, Vol CXVI, page 824

Now, therefore, His Majesty by virtue of the powers by " The Foreign Jurisdiction Act, 1890,<sup>(1)</sup> or otherwise in His Majesty vested, is pleased, by and with the advice of his Privy Council, to order, and it is hereby ordered, as follows :—

\* \* \*

3. (1) Togoland under British Mandate shall be divided into two sections ; to be named " the Northern Section " and " the Southern Section " respectively.

\* \* \*

4. Subject to the provisions of the mandate, the Northern Section shall be administered as if it formed part of the Protectorate ; and, subject as aforesaid, and subject also to the provisions of article 8 of this Order, the Southern Section shall be administered as if it formed part of the Colony, and, until the Governor shall by proclamation issued with His Majesty's approval, signified through a Secretary of State, otherwise ordain, as if it formed part of the Eastern Province thereof.

5. So far as the same may be applicable, the law for the time being in force in the Protectorate shall as from the date of the commencement of this Order, apply to and be the law in force in the Northern Section, but it shall be lawful for the Governor, from time to time, by ordinance to modify or amend any provision contained in such law in its application to the said Northern Section or to exclude any such provision from application thereto and the Governor shall have full power by ordinance to make all such provision as may from time to time be necessary for the administration of justice, the raising of revenue, and generally for the peace, order and good government of the said Northern Section. Provided always that, should any such law so applied as aforesaid or any ordinance enacted by the Governor as aforesaid be repugnant to any provision of the mandate, such law or ordinance shall to the extent of such repugnancy, but not otherwise, be and remain absolutely void and inoperative.

6. So far as the same may be applicable, the law for the time being in force in the Colony shall, as from the date of the commencement of this Order, apply to and be the law in force in the Southern Section, but it shall be lawful for the Governor, from time to time, by ordinance to modify or amend any provision contained in such law in its application to the said Southern Section or to exclude any such provision from application thereto, and the Governor shall have full power by ordinance to make all such provision as may from time to time be necessary for the administration of justice, the raising of revenue, and generally for the peace, order and good government of

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<sup>(1)</sup> *State Papers*, Vol. LXXXII, page 656.

the said Southern Section Provided always that, should any such law so applied as aforesaid or any ordinance enacted by the Governor as aforesaid be repugnant to any provision of the mandate, such law or ordinance shall to the extent of such repugnancy, but not otherwise, be and remain absolutely void and inoperative

7 (1) The Supreme Court of the Gold Coast shall have and exercise throughout the Northern Section the like jurisdiction as it has and exercises in the Protectorate, and as if the said Northern Section formed part of the Protectorate, and shall have and exercise throughout the Southern Section the like jurisdiction as it has and exercises in the Colony and, subject to the terms of any proclamation issued under article 4 of this Order, as if the said Southern Section formed part of the Eastern Province of the Colony

(2) The jurisdiction of the Chief Commissioner's Court of the Protectorate shall extend throughout the Northern Section

8 In the exercise of the powers and authorities hereby conferred upon him the Governor shall follow the provisions of "The Northern Territories Order in Council, 1934,"<sup>(1)</sup> or of any Order or Orders amending the same, and of any other Order in Council relating to the Protectorate or to Togoland under British Mandate, and of any instructions relating to the Protectorate which he may have received or any other instructions relating to the Protectorate or Togoland under British Mandate which he may receive from time to time from His Majesty or through a Secretary of State, and in any Order in Council or instructions relating to the Protectorate and in force at the date of the commencement of this Order the expression "Northern Territories of the Gold Coast," or "Northern Territories" shall be deemed so far as may be necessary or appropriate for the purposes of this Order to include Togoland under British Mandate

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## HONG KONG

1. Letters Patent constituting the Office of Governor and Commander-in-Chief — Westminster, February 14, 1917.

Text in *Statutory Rules and Orders*, 1917, page 1137

### *Amendment*

LETTERS PATENT

Westminster, April, 30, 1938

2. Royal Instructions to the Governor and Commander-in-Chief.—St. James's, February 14, 1917.

*Amendments*

ADDITIONAL INSTRUCTIONS :

St. James's, January 10, 1922.

St. James's, November 15, 1928.

St. James's, November 20, 1929.

St. James's, April 30, 1938.

.. .. .

2. Royal Instructions, 1917 (as amended to 1938).

\* \* \*

2. The Executive Council of the Colony shall consist of the senior military officer for the time being in command of our regular troops within the Colony, the persons for the time being lawfully discharging the functions of Colonial Secretary, of Attorney-General, of Secretary for Chinese Affairs, and of Financial Secretary of the Colony, who are hereinafter referred to as "*ex officio* members," and of such other persons as we may from time to time appoint by any Instructions or warrant under our Sign Manual and Signet, or as the Governor in pursuance of instructions from us through one of our Principal Secretaries of State may from time to time appoint by an instrument under the Public Seal of the Colony. Persons so appointed are hereinafter referred to as "official members" or "unofficial members" according as they hold, or do not hold, office under the Crown in the Colony at the time of appointment.

\* \* \*

13. The Legislative Council of the Colony shall consist of the Governor, the senior military officer for the time being in command of our regular troops within the Colony, the persons for the time being lawfully discharging the functions of Colonial Secretary, Attorney-General, Secretary for Chinese Affairs, and Financial Secretary of the Colony, and such other persons holding office under the Crown in the Colony, and not exceeding four in number at any one time, as we may from time to time appoint by any Instructions or warrants under our Sign Manual and Signet, or as the Governor, in pursuance of instructions from us through one of our Principal Secretaries of State, may from time to time appoint by an instrument under the Public Seal of the Colony, and all such persons shall be styled "official members" of the Legislative Council; and further of such persons, not exceeding eight in number at any one time, as



the Governor, in pursuance of instructions from us through one of our Principal Secretaries of State, may from time to time appoint by an instrument under the Public Seal of the Colony, and all such persons shall be styled "unofficial members" of the Legislative Council

If any official member of the Legislative Council cease to hold office in the Colony his seat in the Council shall thereupon become vacant

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## JAMAICA

- 1 Order in Council altering the Constitution of the Legislative Council —Windsor, May 19, 1884.

### *Amendments*

#### ORDERS IN COUNCIL

- |          |                   |  |
|----------|-------------------|--|
| Balmoral | October 3 1895    | Text, as amended, in <i>Statutory Rules and Orders</i> revised to December 31, 1903, Vol VI, Jamaica, page 6 |
| London   | November 5, 1929  | Text in <i>Statutory Rules and Orders</i> , 1929, page 1475  |
| London   | February 21, 1935 | Text in <i>Statutory Rules and Orders</i> , 1935, page 1793  |

2. Letters Patent constituting the Office of Captain-General and Governor-in-Chief —Westminster, July 29, 1887

Text in *Statutory Rules and Orders* revised to December 31, 1903, Vol VI, Jamaica, page 21

### *Amendment*

#### LETTERS PATENT

- |              |               |   |
|--------------|---------------|---|
| Westminster, | March 5, 1913 | Text in <i>Statutory Rules and Orders</i> , 1913, page 2370 |
|--------------|---------------|---|

- 3 Royal Instructions to the Captain-General and Commander-in-Chief —July 29, 1887.

4. Act of the Imperial Parliament providing for the Government of the Cayman Islands.—June 22, 1863.
5. Order in Council making Provision for the Administration of the Turks and Caicos Islands.—Osborne, August 4, 1873.  
Text in *State Papers*, Vol. LXV, page 1229.

*Amendment*

LAW OF THE LOCAL LEGISLATURE :

April 20, 1926 .. Text in *Laws of Jamaica*, 1926, No. 6.

.. .. .

- i. Order in Council, 1884 (as amended 1895, 1929 and 1935).

\* \* \*

1. There shall be in and for Jamaica a Legislative Council constituted as hereinafter mentioned.

2. The Council shall consist of the Governor, as president, the senior military officer for the time being in command of Her Majesty's regular troops in Jamaica, and the persons for the time being lawfully exercising the functions of the respective offices of Colonial Secretary, Attorney-General, Director of Public Works, and Collector-General (herein referred to as "*ex officio* members"), such other persons, not exceeding ten in number, as Her Majesty may, from time to time, appoint by Instructions or warrant or warrants under her Sign Manual and Signet, or as the Governor, in pursuance of the power hereby vested in him, may from time to time provisionally appoint (herein referred to as "*nominated members*"), and fourteen persons to be elected as hereinafter provided (herein referred to as "*elected members*").

\* \* \*

9.<sup>(1)</sup> No person shall be capable of being elected a member of the Council, or, having been elected, shall sit or vote in the Council, who—

(1) Is the holder of any office or emolument under the Crown, or under the Government of Jamaica ; or

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(<sup>1</sup>) The Order in Council of 1895 further provides (clause 10) as follows :—

No person shall be capable of being elected a member of the Legislative Council of Jamaica for any electoral district, or having been elected, shall sit or vote in the Council, unless he either has resided in that electoral district for 12 months immediately preceding the day of election, or possesses a clear annual income of £150 arising from lands in that district belonging to him in his own right or in right of his wife.

(2) Is not entitled to vote at the election of a member of the Council for some electoral district, or

(3) Does not possess one of the following qualifications, viz —

(a) A clear annual income of £150 arising from lands belonging to him in his own right or in right of his wife

(b) A clear annual income of £200 arising partly from lands belonging to him as aforesaid and partly from any freehold office, or any business, after deducting all charges and expenses of such office or business

(c) A clear annual income of £300 arising from any freehold office or any business, after deducting all charges and expenses of such office or business

(d) The payment annually of direct taxes or export duty or both to the amount of not less than £10

\* \* \*

14 (1) Every male person shall be entitled to be registered in any year as a voter, and when registered to vote at the election of a member of the Council for any of the said electoral districts, who is qualified as follows, that is to say —

(1) Has attained the age of 21 years

(2) Is under no legal incapacity

(3) Is a British subject by birth or naturalisation

(4) Either—

(a) is on the 30th day of June in such year, and has during the whole of the preceding 12 calendar months been an occupier as owner or tenant of a dwelling-house within such district, and has, during the time of such occupation, been rated in respect of such premises so occupied by him, to all poor rates made in respect of such premises, and has, during the said period of 12 calendar months, paid in respect of the same premises alone or in respect of the same premises together with other taxable property owned by him, public or parochial taxes or rates or taxes and rates to the amount of not less than £1, or

(b) is on the 30th day of June in such year possessed of property in respect of which he has, during the preceding 12 calendar months paid, within such district, public or parochial taxes or rates or taxes and rates to the amount of not less than £1 10s provided—

(1) That no person shall be registered as a voter or be entitled to vote for the election of a member of the Council who has been sentenced by any court in Her Majesty's dominions to death, or penal servitude, or imprisonment with hard labour or for a term

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(1) Colonial legislation (*vide Laws of Jamaica Revised Edition, 1927 Vol III chapter 269*), has varied this clause, and has *inter alia* extended the franchise to women in certain circumstances

exceeding 12 months, and has not either suffered the punishment to which he was sentenced or such other punishment as by competent authority may have been substituted for the same or received a free pardon from Her Majesty.

(2) That no person shall be registered as a voter in any year who has within 12 calendar months immediately preceding the 30th day of June in that year received any relief from public or parochial funds.

(3) That after the year 1884 no person not then already registered as a voter shall be so registered unless he shall in the presence of the registering officer or of a magistrate with his own hand subscribe his name to his claim to be registered, and write thereon the date of such subscription.

\* \* \*

43. The votes of the *ex officio* and nominated members of the Council shall not be recorded in support of any law, vote, or resolution imposing any tax or disposing of or charging any part of the public revenue for any purpose other than the payment of the salary or allowances of any public officer in respect of an office to which he was appointed before the date of this Order, or of the pension or gratuity payable in accordance with the rules in force at the date of this Order affecting pensions and gratuities to any person in respect of an office to which he was appointed before the date of this Order, if not less than nine elected members shall have voted against such law, vote, or resolution, unless the Governor shall have declared his opinion that the passing of such law, vote, or resolution is of paramount importance to the public interest.

44. The votes of the *ex officio* and nominated members shall not be recorded against the unanimous votes of all the fourteen elected members on any question, unless the Governor shall have declared his opinion that the decision of such question, in a sense contrary to the votes of the elected members, is of paramount importance to the public interest.

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### 3. Royal Instructions, 1887.

\* \* \*

3. The Privy or Advising Council of the Governor shall consist of the Lieutenant-Governor, if any, the senior military officer for the time being in command of our regular troops within Jamaica, if not below the rank of lieutenant-colonel in our army, the persons for the time being lawfully exercising the functions of Colonial Secretary and of Attorney-General, and such other persons as are members of

the said Privy Council at the date of these Instructions, or as may at any time be named or designated for that purpose by us by any instruction or warrant under our Sign Manual and Signet, or as shall be provisionally appointed by the Governor

Every person so named by us or provisionally appointed by the Governor shall vacate his seat at the end of 5 years from the date of the instrument by which he is appointed

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#### 4 Cayman Islands Act, 1863

[26 & 27 Vict c 31—June 22 1863]

*Whereas certain magistrates and other inhabitants of the Island of Grand Cayman have from time to time, in Vestry or otherwise, passed or assumed to pass certain Acts or resolutions for the Government of the Cayman Islands And whereas doubts are entertained whether such Acts or resolutions are of any effect in the said Islands, and by what authority laws may be made for the government of the same and what laws are actually in force therein, and it is expedient that such doubts should be set at rest Be it therefore enacted by the Queen's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled and by the authority of the same as follows*

1 All Acts or resolutions heretofore passed or purporting to have been passed at any meeting of the magistrates or representatives or of the justices and Vestry or of the Vestry of the Island of Grand Cayman shall so soon as a fair copy of the same shall have been signed by the Governor of Jamaica in verification thereof, be and be deemed to have been valid and effectual for all purposes whatever within the said Cayman Islands, from the date at which the same shall purport to have been passed

2 It shall be competent to the Legislature of Jamaica to make laws for the peace, order and good government of the said Islands, and by such laws to alter or repeal all or any of the aforesaid Acts or resolutions, and also to give to the justices and Vestry, or other body or bodies of persons in the said Islands such power of making laws or regulations for local purposes within the same, as to the said Legislature may seem fit

3 Until it shall be otherwise provided by the said Legislature, it shall be lawful for the said justices and Vestry, in their accustomed manner, or in such other manner as shall be prescribed in writing under the hand and Seal of the Governor of Jamaica, to make such regulations as to them shall seem fit for the following purposes, that is to say—

Respecting their own constitution and procedure ; respecting the powers and duties of public officers ; and especially respecting the powers, functions, and procedure of justices of the peace and officers acting under their authority ; and respecting appeals from the decisions of such justices to the Supreme Court of Jamaica ;

Respecting the establishment, maintenance, discipline and powers of the police ;

Respecting the management, occupation and disposal of the public property or common land ;

Respecting the abatement of nuisances, the construction of works of public utility, the making of roads, the cleansing of streets and houses, and other matters affecting the health or convenience of the community ;

Respecting the custody of offenders and accused persons ; respecting the imposition and collection of rates and taxes, and respecting the custody and expenditure of the proceeds thereof :

Provided always, that no justice of the peace shall by virtue of any such regulation try any suit or action, without the consent of the parties thereto, in which the value of the matter in dispute shall exceed £100, nor take cognisance of any capital crime, nor sentence any offender to the payment of a fine of more than £50, or to imprisonment for a longer term than 12 months.

4. No regulation made by such justices and Vestry or other legislative authority in the said Islands shall take effect until the same shall have been signed by the Officer administering the Government of Jamaica in token of his assent thereto ; and every such regulation may be disallowed by Her Majesty by Order in Council or through one of her Principal Secretaries of State, and shall cease to be of any effect so soon as the disallowance thereof shall be proclaimed within the said Islands.

5. Except as they may be inconsistent with the aforesaid Acts or resolutions, and subject to any such alterations as may be made by or by authority of the aforesaid Legislature of Jamaica, and to such regulations as may from time to time be made under authority of this Act, the laws now in force in Jamaica shall from the date of this Act be deemed to be in force in the said Islands, so far as the same shall be applicable to the circumstances thereof.

6. The Officer administering the Government of Jamaica shall have, as far as may be, the same powers and authorities in respect of the said Islands as if the same had been part of the Island of Jamaica.

7. The Supreme Court of Jamaica, and all officers thereof, shall have and exercise, in respect to suits, actions, questions or prosecutions arising in the said Islands which may not be lawfully triable by any authority therein, or which, in conformity with any law or

regulation in force therein, may be referred for the decision of the said Court, the same jurisdiction and power as if the same Islands were part of the Island of Jamaica

8 It shall be lawful for the Supreme Court to entertain appeals from the decisions of a justice or justices of the peace in the said Islands, within such limits as may be prescribed by any law or regulation in force in the said Islands, and by rule of court from time to time to make such special provision as the said Court may think requisite, for the proper hearing and determination of such suits actions prosecutions and appeals as aforesaid provided that no such rule shall take effect until it shall have been signed by the Officer administering the Government of Jamaica in token of his approval thereof

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## 5 Turks and Caicos Islands Order in Council, 1873 (as amended 1926).

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1 The Turks and Caicos Islands shall, from and after a day to be proclaimed by the Governor of Jamaica, be annexed to and form part of the Colony of Jamaica, on the terms and conditions herein after appointed, and the powers and functions of the Legislative Council and of the Executive Council of the Turks and Caicos Islands shall thereupon absolutely cease and determine

2 The revenue, expenditure, and debt of the Turks and Caicos Islands shall be kept distinct from the revenue, expenditure, and debt of the other portions of the Colony of Jamaica

3 Subject to the provisions of this Order, the Governor and Legislature of Jamaica shall have respectively the same jurisdiction, powers, and authority over the Turks and Caicos Islands that they have over the Island of Jamaica Provided that no law passed by the Legislature of Jamaica shall apply to the Turks and Caicos Islands, unless it is in express terms made applicable thereto

4 There shall be constituted at the Turks and Caicos Islands a Board, to be called "the Legislative Board for the Turks and Caicos Islands," and such Board shall, subject to the provisions of this Order, have all the powers, jurisdiction, and authority hitherto possessed by and vested in the Legislative Council of the Turks and Caicos Islands

5 The said Board shall consist of the Commissioner who, by virtue of his office, shall be president of the said Board, and seven other persons

6. The Governor of Jamaica may, by warrant or warrants under the Seal of the Colony of Jamaica, from time to time appoint, and from time to time remove, such persons resident in the Turks and Caicos Islands as he may think fit, to be together with the Commissioner members of the said Board. Three of the seven other persons so appointed shall be holders of office under the Crown, and four shall not be holders of any office under the Crown other than an honorary office. In case of the temporary absence or incapacity from any cause of a member of the said Board, whether official or non-official, the Governor of Jamaica may appoint some other person to act in the place of such member during such absence or incapacity.

\* \* \*

11. It shall be lawful for the said Board from time to time, subject to the provisions of this Order, to make ordinances for regulating taxation and the expenditure of revenue, and for other matters of a purely local character, and for regulating the course of procedure under this Order.

12. No ordinance passed by the said Board shall come into operation until the Governor of Jamaica shall have assented to the same, and shall have signed the same in token of such assent, and the fact of such assent shall have been published in the Turks and Caicos Islands by authority of the Governor of Jamaica.

13. The Governor of Jamaica may disallow any ordinance passed by the said Board, and every ordinance so disallowed shall become null and void so soon as the disallowance thereof shall be published in the Turks and Caicos Islands, by authority of the Governor of Jamaica.

14. No law hereafter passed by the Legislature of Jamaica shall be barred of its force or effect by any ordinance of the said Board. And any ordinance passed by the said Board which shall be in any respect repugnant to the provisions of any law of the Jamaica Legislature which shall extend to the Turks and Caicos Islands, or be repugnant to any order or regulation made under authority of such law, shall be read subject to such law, order, or regulation, and shall, to the extent of such repugnancy, but not otherwise, be and remain absolutely void and inoperative.

15. Any member of the said Board may move any resolution or introduce any ordinance, or propose any question for debate provided that no resolution be passed, or ordinance adopted, or question allowed for debate whenever the object of such resolution, ordinance, or question may be to dispose of or to charge any part of the revenue arising within the Turks and Caicos Islands, unless the same be moved, introduced, or proposed by the Commissioner or some other member under the instructions of the Governor of Jamaica.

\* \* \*



21 It shall be lawful for the Legislature of Jamaica from time to time to repeal or alter any of the provisions of this Order Provided however, that any such law shall have a clause suspending the operation of such law until Her Majesty's pleasure thereon has been signified in the Colony

\* \* \*



## KENYA COLONY AND PROTECTORATE

- 1 Ordinance of the local Legislature to provide for the Election and Nomination of Members to the Legislative Council of the East Africa Protectorate —July 22, 1919

Text in *Laws of Kenya* Revised Edition 1926 Vol I page 285

- 2 Letters Patent constituting the Office of Governor and Commander in Chief of the Colony and providing for the Government thereof —Westminster, September 11, 1920

Text in *Statutory Rules and Orders* 1920 Vol II page 1612

### *Amendment*

#### LETTERS PATENT

Westminster March 29 1934      Text in *Statutory Rules and Orders* 1934 Vol II page 767

- 3 Royal Instructions to the Governor and Commander in Chief of the Colony —St James's, March 29 1934

### *Amendment*

#### ADDITIONAL INSTRUCTIONS

St James's June 20 1935

- 4 Order in Council providing for the Establishment of Courts in the Colony —London, June 27 1921

Text in *Statutory Rules and Orders* 1921 page 475

- 5 Order in Council providing for the Exercise of Jurisdiction in the Protectorate —London, August 13 1920

Text in *State Papers*, Vol CXIII page 174

*Amendment*

## ORDER IN COUNCIL :

London, March 22, 1934 .. .. Text in *Statutory Rules and Orders*, 1934, Vol. I, page 650.

.. .. ..

## I. Legislative Council Ordinance, 1919.

\* \* \*

3. A member shall be elected in accordance with the provisions of this ordinance to represent in the Council each of the eleven electoral areas the boundaries whereof are set out in schedule I.

\* \* \*

9. No person shall be entitled to have his name entered on any register of voters if such person :—

(1) is not a British subject of European origin or descent ;

(2) is not of the age of 21 years ;

(3) is in the opinion of a competent court of unsound mind ;

(4) has been convicted of a criminal offence and has been sentenced to a term of imprisonment of either description for a term of 12 months or exceeding 12 months and has not received a pardon. Provided that such disqualification shall cease 2 years after the date of the expiration of the sentence ;

(5) has received relief from any public funds whatsoever within 12 months of his application to have his name entered on the register ;

(6) has been declared bankrupt or insolvent by a competent court in the Protectorate or elsewhere and has not received his discharge ;

(7) is suffering from any disqualification provided for the time being by any enactment ;

(8) has not ordinarily resided in the Protectorate for at least one period of 12 consecutive months prior to the date of his application to have his name entered on the register ;

(9) has not resided in the electoral area in which the application to have his name entered on the register is made for a period of not less than 3 months.

10. No person shall be entitled to be registered as a voter or to vote in more than one electoral area.

\* \* \*

12 (1) Subject to any of the disqualifications mentioned in sub-section (2) of this section any person who is qualified to be registered and is registered as a voter for any electoral area shall be eligible for election as a member

(2) A person shall be disqualified for election as a member to represent any electoral area if such person —

(i) has not ordinarily resided in the Protectorate for at least one period of 2 years before being nominated as a candidate,

(ii) is in the permanent employment of the Government or is serving the Government for a term of years,

(iii) is an employee of any municipal corporation or committee

(iv) has been convicted of a criminal offence and has been sentenced to a term of imprisonment of either description for a term of 6 months or exceeding 6 months and has not received a pardon Provided that the Governor in Council may by order in any particular case remove such disqualification

(v) has received relief from any public funds whatsoever within 12 months of his nomination as a candidate for election,

(vi) cannot read write and speak the English language

(3) A candidate for election who has undertaken either directly or indirectly himself or by any one in trust for him any contract with a Government department for which the consideration exceeds 750 rupees shall not be disqualified for election provided that at least 14 days before the date appointed for the election he shall publish in the electoral area for which he is a candidate the fact of such contract, giving particulars thereof The publication shall be by means of a notice in a newspaper circulating in such electoral area

(4) If any elected member after his election undertakes any such contract either directly or indirectly himself or by any one in trust for him he shall forthwith inform the Clerk to the Council of the fact of such contract giving particulars thereof The Clerk shall publish the fact in the *Official Gazette*

(5) The election of any candidate who fails to comply with the provisions of sub section (3) of this section shall be invalid and the seat shall be deemed to be vacant and the candidate shall be liable on conviction to the penalty specified in section 23 of this ordinance and shall be disqualified as therein provided

(6) Any member who fails to comply with sub section (4) of this section shall forfeit his seat and shall be liable on conviction to the penalty specified in section 23 of this ordinance and shall be disqualified as therein specified

### 3. Royal Instructions, 1934 (as amended 1935).

\* \* \*

4. The Executive Council of the Colony shall consist of the persons for the time being lawfully discharging the functions of Colonial Secretary, of Attorney-General, of Treasurer, of Chief Native Commissioner, of Commissioner for Local Government, Lands and Settlement, of Director of Medical Services, of Director of Agriculture and of Director of Education, who shall be styled "*ex officio* members" of the Executive Council, and such other persons holding office in the public service of the Colony as the Governor, in pursuance of instructions from us through one of our Principal Secretaries of State, may from time to time appoint by an instrument under the Public Seal, who shall be styled "official members" of the Executive Council, and further of such persons (if any) not holding office in the public service of the Colony as the Governor, in pursuance of instructions from us through one of our Principal Secretaries of State, may, from time to time, appoint by an instrument under the Public Seal, who shall be styled "unofficial members" of the Executive Council :

Provided that if any official member of the Council shall cease to hold office in the public service of the Colony his seat in the Council shall thereupon become vacant.

Whenever upon any special occasion the Governor desires to obtain the advice of any person within the Colony or the Protectorate of Kenya relating to affairs in the Colony, he may, by an instrument under the Public Seal, summon for such special occasion any such person as an extraordinary member of the Executive Council.

\* \* \*

15. The Legislative Council of the Colony shall consist of the Governor as president, eleven *ex officio* members, nominated official members not exceeding nine in number, eleven European elected members, Indian elected members not exceeding five in number, one Arab elected member, and two nominated unofficial members to represent the interests of the African community :

Provided that if after a dissolution of the Council less than five persons are elected to be Indian elected members, or if at any time the number of Indian elected members is less than five, the vacancy or vacancies so arising may be filled by the appointment in the manner hereinafter provided of nominated Indian unofficial members :

Provided further that the appointment of nominated unofficial members to represent the interests of the African community shall be discontinued in pursuance of instructions from us through one

of our Principal Secretaries of State when it shall appear to us that such appointment is unnecessary

Provided further that if one of the nominated official members is not specially appointed to represent the interests of the Arab community there shall be a nominated unofficial member to represent such interests

16 The *ex officio* members of the Legislative Council shall be the persons for the time being lawfully discharging the functions of Colonial Secretary, of Attorney-General, of Treasurer, of Chief Native Commissioner, of Commissioner for Local Government, Lands, and Settlement of Director of Medical Services, of Director of Agriculture, of Director of Education, of General Manager of the Kenya and Uganda Railways and Harbours, of Director of Public Works, and of Commissioner of Customs

17 The nominated official members of the Legislative Council shall be such persons holding office in the public service of the Colony or of the Protectorate of Kenya as the Governor, in pursuance of instructions from us through one of our Principal Secretaries of State, may from time to time appoint by an instrument under the Public Seal They shall hold their places in the Council during our pleasure and shall in any case vacate their seats at the next dissolution of the Council after the appointment, but may be re-appointed

Provided that if any nominated official member of the Council shall cease to hold office in the public service of the Colony or of the Protectorate of Kenya his seat in the Council shall thereupon become vacant

18 The European elected members of the Legislative Council shall be such fit persons as may be elected in accordance with the provisions of the ordinance entitled 'An ordinance to provide for the election and nomination of members to the Legislative Council of the East Africa Protectorate' passed by the Legislative Council of the East Africa Protectorate on the 10th day of July, 1913,<sup>(1)</sup> or of any law adding to, amending or substituted for the same by the Legislative Council of the Colony and for the time being in force therein

19 The Indian and Arab elected members of the Legislative Council shall be such fit persons as may be elected in accordance with the provisions of any law enacted for the purpose by the Legislative Council of the Colony The nominated unofficial members to represent the interests of the African community shall be appointed by the Governor by an instrument under the Public Seal in pursuance of instructions from us through one of our Principal Secretaries of State The nominated unofficial member (if any) of the Council to represent the interests of the Arab community shall be such Arab or other person representing such interests and not holding office in

the public service of the Colony or of the Protectorate of Kenya as the Governor in pursuance of instructions from us through one of our Principal Secretaries of State may from time to time appoint under the Public Seal. All such nominated unofficial members shall hold their places in the Council during our pleasure and shall in any case vacate their seats at the next dissolution of the Council after their appointment, but may be re-appointed.

The nominated Indian unofficial members (if any) shall be nominated from among those persons whose names are entered on the register in force for the time being of voters for the election of Indian elected members prepared in accordance with the provisions of any law enacted for the purpose by the Legislative Council of the Colony and shall be appointed by the Governor by an instrument under the Public Seal in pursuance of instructions from us through one of our Principal Secretaries of State. The nominated Indian unofficial members shall hold their places in the Council during our pleasure and shall in any case vacate their seats at the next dissolution of the Council after their appointment or at the termination of such period as may, in accordance with any instructions from us through one of our Principal Secretaries of State, be provided in the instrument by which they are appointed, whichever is the earlier.

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#### 4. Order in Council, 1921.

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4. (1) There shall be a court of record styled "His Majesty's Supreme Court of Kenya" (in this Order referred to as "the Supreme Court") with full jurisdiction, civil and criminal, over all persons and over all matters in the Colony.

(2) Subject to the other provisions of this Order, such civil and criminal jurisdiction shall, so far as circumstances admit, be exercised in conformity with the Civil Procedure and Penal Codes of India and the other Indian Acts which are in force in the Colony at the date of the commencement of this Order and subject thereto and so far as the same shall not extend or apply shall be exercised in conformity with the substance of the common law, the doctrines of equity and the statutes of general application in force in England on the 12th day of August, 1897, and with the powers vested in and according to the procedure and practice observed by and before courts of justice and justices of the peace in England according to their respective jurisdiction and authorities at that date save in so far as the Civil Procedure and Penal Codes of India and the other Indian Acts in force as aforesaid and the said common law doctrines of equity and the statutes of general application and the said powers, procedure

and practice may at any time before the commencement of this Order have been or hereafter may be modified amended or replaced by other provisions in lieu thereof by or under the authority of any Order of His Majesty in Council or by any ordinance or ordinances for the time being in force in the Colony

Provided always that the said common law doctrines of equity and the statutes of general application shall be in force in the Colony so far only as the circumstances of the Colony and its inhabitants permit and subject to such qualifications as local circumstances render necessary

(3) The Supreme Court shall sit at such place or places as the Governor may appoint

(4) The Supreme Court shall have a Seal bearing the style of the Court and a device approved by the Secretary of State until such Seal is provided the Seal of the present High Court of East Africa may be used

5 The Supreme Court shall be a court of admiralty and shall exercise admiralty jurisdiction in all matters arising on the high seas or elsewhere or upon any lake or other navigable inland waters or otherwise relating to ships and shipping

6 (1) Courts subordinate to the Supreme Court and courts of special jurisdiction may be constituted by or under the provisions of any ordinance as occasion requires

(2) Provision may be made by ordinance for the hearing and determining of appeals from any such court by the Supreme Court or otherwise

7 In all cases civil and criminal to which natives are parties every court (a) shall be guided by native law so far as it is applicable and is not repugnant to justice and morality or inconsistent with any Order in Council or ordinance or any regulation or rule made under any Order in Council or ordinance and (b) shall decide all such cases according to substantial justice without undue regard to technicalities or procedure and without undue delay

8 If any sentence of death is pronounced by the Supreme Court a copy of the evidence shall be transmitted to the Governor and the sentence shall not be carried into effect until confirmed by him

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5 Protectorate Order in Council, 1920 (as amended 1934)

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5 The Governor and Commander in Chief for the time being of the Colony (hereinafter called the Governor) shall be the Governor of the Protectorate and he is hereby authorised empowered and

commanded to exercise on His Majesty's behalf all such powers and jurisdiction, as His Majesty at any time before or after the passing of this Order had or may have within the said territories, and to that end to take or cause to be taken all such measures and to do or cause to be done all such matters and things therein as are lawful and as in the interest of His Majesty's service he may think expedient, subject to such instructions as may have been received, or as he may hereafter receive by Order in Council, or under His Majesty's Sign Manual and Signet, or through a Secretary of State.

And in the absence of such instructions, any instructions addressed to the Governor of the Colony by His Majesty, or through a Secretary of State, shall in so far as they are applicable be observed by the Governor in the exercise of his powers and jurisdiction as Governor of the Protectorate.

6. The Executive Council of the Colony shall be and be deemed to be the Executive Council of the Protectorate.

7. *It shall be lawful for the Legislative Council for the time being* of the Colony, by any ordinance or ordinances, to exercise and provide for giving effect to all such power and jurisdiction as His Majesty at any time before or after the passing of this Order has acquired or may acquire in the Protectorate, and generally for the peace, order and good government of the Protectorate and of all persons therein.

Provided as follows :—

(1) That all laws, ordinances, proclamations, bye-laws and regulations of whatsoever nature in force at the date of the commencement of this Order within the said Protectorate shall continue in force until repealed or revoked by or in pursuance of any law or ordinance passed by the Legislative Council of the Colony:

(2) That every suit, action, complaint, matter, or thing which shall be depending in any court having jurisdiction within the said Protectorate at the commencement of this Order shall and may be proceeded with in such court in like manner as if this Order had not been passed.

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12. The courts now or hereafter established in the Colony shall have in respect of matters occurring within the Protectorate, so far as such matters are within the jurisdiction of His Majesty, the same jurisdiction, civil and criminal, original and appellate, as they respectively possess from time to time in respect of matters occurring within the Colony, and the judgments, decrees, orders, and sentences of any such court made or given in the exercise of the jurisdiction hereby conferred may be enforced and executed, and appeals there-



from may be had and prosecuted in the same way as if the judgment, decree, order, or sentence had been made or given under the ordinary jurisdiction of the court

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## LEEWARD ISLANDS

- 1 Act of the Imperial Parliament for the Federation and General Government of the Islands —August 21, 1871

Text in *State Papers*, Vol LXI page 1349

### *Amendments*

#### ACTS OF THE FEDERAL LEGISLATURE

November 4 1899

April 3 1903

March 30 1914

June 14 1923

March 19 1924

May 28 1927

Text as amended to 1927, in *Federal Acts of the Leeward Islands* Revised Edition, 1927, Vol I, page 1

May 22 1936

August 28, 1937

- 2 Letters Patent constituting the Office of Governor and Commander-in-Chief — Westminster, November 17, 1936

Text in *Statutory Rules and Orders*, 1936, Vol II, page 3674

- 3 Royal Instructions to the Governor and Commander-in-Chief —St James's, November 17, 1936

- I Act of Parliament, 1871 (as amended to 1937)

[34 & 35 Vict , c 107 —August 21, 1871 ]

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6 There shall be in the Leeward Islands a legislative body to be styled " the General Legislative Council," composed of nine elective and nine official members, provided that the proceedings of the Council shall not be invalid on account of any vacancies therein

7. (1) Of the elective members of the General Legislative Council three shall be taken from among the unofficial members of the Island Council of Antigua, three from among the unofficial members of the Island Council of St. Christopher and Nevis, one of whom shall at the time of his election be resident in Nevis, two from among the unofficial members of the Island Council of Dominica, and one from among the unofficial members of the Island Council of Montserrat. The said elective members shall be respectively chosen by the unofficial members of the said Island Councils from which they are taken, and shall be elected in such manner as such Councils may, from time to time, by any standing rule, determine, and within such period as may be, from time to time, prescribed by proclamation; and every such member shall *ipso facto* vacate his seat on ceasing to be a member of such Island Council.

(2) The Governor may accept the resignation of any elective member of the Council upon a written request to resign being addressed by such member to the Governor.

(3) Every elective member, who shall accept any office of emolument under the Crown, shall thereupon vacate his seat in the said Council but shall be eligible for re-election.

(4) When any elective member vacates his seat in Council, otherwise than by the dissolution or other determination thereof, the elective members of the Island Council which he represented shall choose a successor within 3 months after notice of such vacancy shall have been proclaimed in the Presidency; and, if they fail to do so within that time, the Governor shall appoint a person from that Island Council to fill such vacancy.

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8. The official members shall be as follows :—

The Governor, the holder of the substantive appointment of Administrator of Antigua, the holder of the substantive appointment of Administrator of the Presidency of Saint Christopher and Nevis, the holder of the substantive appointment of Administrator of Dominica, the person for the time being lawfully performing the duties of Federal Secretary, the person for the time being lawfully performing the duties of Attorney-General, the holder of the substantive appointment of Commissioner of the Presidency of Montserrat, the holder of the substantive appointment of Commissioner of the Presidency of the Virgin Islands and the person for the time being lawfully performing the duties of Federal Treasurer.

Provided that if any holder of the substantive appointments of Administrator of the Presidency of Antigua, Administrator of the Presidency of Saint Christopher and Nevis, Administrator of the Presidency of Dominica, Commissioner of the Presidency of Montserrat, Commissioner of the Presidency of the Virgin Islands, respectively, is unable to take his seat upon the Council the Governor

shall provisionally appoint a person holding office under the Government of the Colony, or of any Presidency to be a temporary member of the said Council until such time as such holder of a substantive appointment is able to take his seat upon the Council

Provided that if and when the duties of the offices of any two official members are being discharged either permanently or temporarily by one and the same person it shall be lawful for the Governor to appoint some fit and proper person, holding office under the Government of any Presidency, or of the Colony of the Leeward Islands to be an official member of the said Council and to make up the full number of nine official members. Such person so appointed shall, *ipso facto*, vacate his seat when, and so soon as, the said duties are being performed by two different persons

9 (1) Notwithstanding anything contained in this Act, the Governor may from time to time appoint to the General Legislative Council—

(a) a person resident in the Presidency of the Virgin Islands to be an unofficial member of such Council

(b) a person holding office under the Government of the Colony of the Leeward Islands and approved by the Secretary of State, to be an official member of such Council

(2) The powers conferred by this section shall not be exercised singly. Provided, however, that on a vacancy occurring in the official membership created by this section other than in the manner mentioned in sub-section 5 hereof, the Governor may fill such vacancy

(3) Upon appointments under this section and during the continuance only of such appointments, this Act shall have the following effect —

(a) Section 6 shall have effect as though for the word "nine" in both places where that word occurs, there were substituted the word "ten" and for the purpose of that section the unofficial member appointed under this Act shall be deemed to be an elective member

(b) Section 8 shall have effect as though for the word "nine" in the second proviso thereto, there were substituted the word "ten"

(4) (a) Where a person is appointed an unofficial member of the General Legislative Council, the Governor may accept his resignation therefrom, and in the manner provided by this Act for the acceptance of the resignation of an elective member

(b) An unofficial member appointed under this section who shall accept any office of emolument under the Crown shall thereupon vacate his seat in the said Council

(5) The person appointed to be an official member shall *ipso facto* vacate his seat when and so soon as the unofficial member

appointed by virtue of this section ceases to be a member of the General Legislative Council.

10. (1) Subject to the provisions of the 22nd and 23rd sections of this Act, the Governor, with the consent of the General Legislative Council, hereinafter referred to as "the Council," may make laws for the Leeward Islands, or any part thereof, on the following subjects :—

(a) The law of real and personal property, including wills, testaments, probate, and administration of estates of deceased persons ;

(b) The mercantile law ;

(c) The law relating to husband and wife, parent and child, marriage, divorce and guardianship of infants ;

(d) The criminal law ;

(e) The constitution of courts of law, the criminal and civil administration of justice, including the jurisdiction, practice, and procedure of all courts of law, criminal and civil ;

(f) The establishment and regulation of a common convict station and a common prison discipline ;

(g) The establishment and regulation of a general police force, and of the other protective forces of the Leeward Islands ;

(h) The post office and the electric telegraph ;

(i) Quarantine ;

(j) Currency ;

(k) Weights and measures ;

(l) Audit of the public accounts in the several Presidencies ;

(m) Education ;

(n) Immigration and treatment of immigrants ;

(o) Idiots, lunatics, and idiot and lunatic asylums ;

(p) Copyrights and patents ;

(q) The constitution and procedure of the Council ;

(r) Such other subjects in respect of each Presidency as the Island Legislature thereof may declare to be within the competency of the General Legislature.

(2) Where in consequence of a declaration made by the Island Legislature of any Presidency in pursuance of paragraph (r) of the preceding sub-section, any subject shall be within the competency of the General Legislature, that subject shall cease, as respects that Presidency, to be within the competency of the General Legislature if the Island Legislature shall revoke such declaration and repeal any enactment in which it is embodied ; but every law which shall have been enacted by the General Legislature by virtue of that declaration shall, to the extent of its operation as respects the Presidency, remain in force but shall be subject to amendment and repeal as if it were a law of the Island Legislature.

11 Subject to the provisions of the 22nd and 23rd sections of this Act, the Governor may, with the consent of the legislative body of any Presidency, make laws for the peace, order, and good government thereof, provided that if the Governor shall consider that it is expedient —

(a) that in the interest of public faith or of good government (which expressions shall, without prejudice to their generality, include the responsibility of a Presidency as a component part of the British Empire and all matters pertaining to the appointment salary and other conditions of service of any public officer or officers), that any bill introduced or any motion, resolution or vote proposed for decision in the Island Council of any Presidency should have effect, or

(b) to secure detailed control of the finances of any Presidency during such time as, by virtue of the receipt of financial assistance by such Presidency from His Majesty's Exchequer for the purpose of balancing the annual budget or otherwise, such control rests in the case of such Presidency with His Majesty's Government, that any bill introduced or any motion, resolution or vote proposed for decision in the Island Council of such Presidency should have effect, then if such Island Council fails to pass any such bill, motion, resolution or vote within such time as the Governor may think reasonable and expedient, the Governor may at any time within his discretion and notwithstanding any other provisions of any law in force in such Presidency, or of any standing orders of such Island Council declare that such bill, motion, resolution or vote shall have effect and thereupon the same shall have effect as if it had been passed by such Island Council and, in the case of any such bill, the Governor may assent thereto in His Majesty's name and sign the same in token of such assent but any island enactment relating to any of the subjects named in the preceding section may at any time be repealed or altered by the General Legislature, and shall without any formal repeal, be void so far as it is repugnant to any law passed by the General Legislature

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30 It shall be lawful for His Majesty, by Order in Council, from time to time, on address from the legislative body of any of the West Indian islands not included in this Act, and from the Council to bring such island under the operation of this Act, on such terms and conditions in each case as are in the addresses expressed, and as His Majesty thinks fit to approve, and the provisions of any Order in Council in that behalf shall have effect as if they had been enacted by the Imperial Parliament

## 3. Royal Instructions, 1936.

\* \* \*

8. The Executive Council of the Leeward Islands shall consist of the persons for the time being lawfully discharging the functions of Administrator of Antigua, Administrator of Saint Christopher and Nevis, Administrator of Dominica, and Attorney-General of the Leeward Islands, who shall be called "*ex officio* members," and such other persons as we may from time to time appoint by any Instructions or warrants under our Sign Manual and Signet or as the Governor may appoint by an instrument under the Public Seal of the Leeward Islands, in pursuance of any instructions from us through one of our Principal Secretaries of State, or under the power delegated to him by our said Letters Patent.

Every such member not being an *ex officio* member shall vacate his seat in the Council at the end of 3 years from the date of the instrument by or in pursuance of which he is appointed, or at such earlier date as may be provided by that instrument, but any such member may be reappointed.

If any member of the Council, other than an *ex officio* member, holding office in the public service of the Leeward Islands or of any Presidency shall cease so to hold office his seat in the Council shall thereupon become vacant.

Whenever, upon any special occasion, the Governor desires to obtain the advice of any person within the Leeward Islands relating to affairs therein, he may, in such manner as he shall think fit, appoint such person as an extraordinary member of the Council for such special occasion.

\* \* \*

10. The Executive Councils of the Presidencies shall consist of the persons for the time being lawfully discharging the functions of Administrator or Commissioner of the Presidency (when the Governor is present), and of Federal Secretary and of Attorney-General of the Leeward Islands, who shall be called "*ex officio* members," and of such persons as we may from time to time appoint by any Instructions or warrants under our Sign Manual and Signet or as the Governor may appoint by an instrument under the Public Seal of the Leeward Islands in pursuance of any instructions from us through one of our Principal Secretaries of State.

Every such member of any of the said Councils not being an *ex officio* member shall vacate his seat in the Council at the end of 3 years from the date of the instrument by or in pursuance of which he is appointed, or at such earlier date as may be provided by that instrument, but any such member may be reappointed.

If any member of the Council of any of the Presidencies, other than an *ex officio* member, holding office in the public service of the Leeward Islands or of any Presidency shall cease to hold office, his seat in the Council shall thereupon become vacant

Whenever, upon any special occasion, the Governor, Administrator or Commissioner desires to obtain the advice of any person within any of the Presidencies relating to affairs therein, he may summon for such special occasion any such person as an extraordinary member of the Executive Council of the Presidency

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## ANTIGUA

Ordinance of the local Legislature reconstituting the  
Legislative Council—December 11, 1936.

\* \* \*

### PART I

#### *Constitution and Powers of Council*

3 From and after a date to be fixed by the Governor-in-Council by proclamation in the *Gazette* the Council of the Presidency now subsisting and all and every the privileges of that body, shall cease and determine absolutely, and in place of the said Council there shall be in and for the Presidency a Council which shall be constituted in such manner and have such powers as are hereinafter provided

4 The Council shall be composed of three official members three nominated members and five elected members

5 (1) The official members shall be—

(a) The Administrator as president

(b) Two other persons holding office in the public service of the Colony or the Presidency, appointed by office or by name by His Majesty by any instruction or warrant under the Royal Sign Manual and Signet, or by the Governor by an instrument under the Public Seal of the Presidency in pursuance of instructions from His Majesty through the Secretary of State

(2) The nominated members shall be such persons not holding office in the service of the Crown, as may from time to time be appointed by His Majesty by any instruction or warrant under the Royal Sign Manual and Signet, or by the Governor by an instrument under the Public Seal of the Presidency in pursuance of instructions from His Majesty through the Secretary of State.

(3) The elected members shall be persons qualified and elected as hereinafter provided.

\* \* \*

12. An official or nominated member of the Council shall hold his seat during His Majesty's pleasure and shall in any case vacate his seat at the next dissolution of the Council after his appointment, unless previously removed by virtue of any instruction or warrant under the Royal Sign Manual and Signet or by His Majesty through the Secretary of State, or unless his seat shall be vacated under the provisions of section 9 of this ordinance. An official or nominated member may be re-appointed.

\* \* \*

15. The Governor shall dissolve the Council at the expiration of 3 years from the date of the return of the first writs at the last preceding general election, if it shall not have been sooner dissolved.

\* \* \*

19. Subject to the provisions of this ordinance all questions brought before the Council shall be decided by the majority of the votes given, and the Administrator shall have a casting vote if the votes be equally divided, but shall not have an original vote.

In the absence of the Administrator from the Council, the member presiding shall have an original vote, and a casting vote if the votes are equally divided.

\* \* \*

22. It shall be competent for any member of the Council to propose any question for debate therein ; and such question, if seconded by any other member, shall be debated and disposed of according to the standing rules and orders :

Provided that—

(i) no ordinance, vote, resolution or question, the object or effect of which may be to dispose of or charge any part of His Majesty's revenue arising within the Presidency, or to revoke, alter or vary any such disposition or charge, shall be proposed, except by the Administrator or with his consent ; and

(ii) No vote, resolution or question, the object or effect of which may be to suspend the standing orders of the Council, shall be proposed except by the Administrator or with his consent.

23. It shall be lawful for the Governor, with the advice and consent of the Council, to make laws for the peace, order and good government of the Presidency.



24 (1) If the Governor shall consider that it is expedient—

(a) in the interest of public faith or of good government (which expressions shall, without prejudice to their generality, include the responsibility of the Presidency as a component part of the British Empire, and all matters pertaining to appointment salary and other conditions of service of any public officer or officers); or

(b) to secure detailed control of the finances of the Presidency during such time as, by virtue of receipt of financial assistance by the Presidency from His Majesty's Exchequer for the purpose of balancing the annual budget or otherwise, such control rests with His Majesty's Government,

that any bill introduced, or any motion, resolution or vote proposed for decision, in the Council should have effect, then if the Council fail to pass such bill, motion, resolution or vote within such time as the Governor may think reasonable and expedient, the Governor at any time within his discretion, may, notwithstanding any provisions of any law of the Colony or Presidency or of any standing orders of the Council declare that such bill, motion, resolution or vote shall have effect, and thereupon the same shall have effect as if it had been passed by the Council, and in the case of any such bill, the provisions of this ordinance as to assent to bills and disallowance of ordinances shall apply accordingly

\* \* \*

## PART II

### *Qualification and Election of Members of Council and Registration of Voters*

#### QUALIFICATIONS

28 No person shall be capable of being elected a member of the Council, or, having been elected shall sit or vote in the Council who at the time of election—

(1) is the holder of any public office, or

(2) is a minister of religion, or

(3) is a returning officer at the election in question, or

(4) is not entitled to vote at the election of a member of the Council, or

(5) does not

(a) possess a clear income of at least £200 per annum, or

(b) own real property in the Presidency of the value of at least £500 above all charges and encumbrances affecting the same, or

(c) occupy land in the Presidency, as tenant to another, of rental value of at least £50 per annum

\* \* \*

30. If any elected member of the Council—

(1) without the leave of the Administrator previously obtained, is absent from three consecutive meetings of the Council ; or

(2) becomes a citizen or subject of, or makes any declaration or acknowledgement of allegiance to, any foreign State or Power ; or

(3) is adjudicated a bankrupt ; or

(4) is sentenced in any part of His Majesty's dominions, or in any territory under His Majesty's protection, to death, penal servitude, or imprisonment for a term exceeding 12 months ; or

(5) dies ; or

(6) by writing under his hand addressed to the Governor, resigns his seat in the Council ; or

(7) accepts any public office ; or

(8) ceases to possess the income or property qualification required by section 28 ; or

(9) becomes a lunatic so found under any law in force in the Presidency ; or

(10) becomes a minister of religion ;

his seat in the Council shall thereupon become vacant.

31. (1) Every person shall be entitled to be registered as a voter, and when registered to vote at the election of members of the Council, who—

(a) has attained the age of 21 years ; and

(b) is not a lunatic so found under any law in force in the Presidency ; and

(c) is a British subject ; and

(d) has resided in the Presidency for 12 months immediately preceding the date of registration or is domiciled in the Presidency and is resident therein at the date of such registration, and in any case possesses one of the following qualifications—

(i) has a clear income of at least £30 per annum ; or

(ii) is the owner of real property within the Presidency of the value of at least £100 above all charges and encumbrances affecting the same ; or

(iii) is paying rent in respect of real property situate within the Presidency at the rate of at least £12 per annum ; or

(iv) has paid direct taxes for the previous year to an amount of at least 15s.

Provided that :—

Firstly, no person shall be registered as a voter or be entitled to vote for the election of a member of the Council who has been convicted of perjury in any court in His Majesty's dominions or in any territory under His Majesty's protection, or who has been

sentenced by any such court to death, or penal servitude, or imprisonment for a term exceeding 12 months, and has not either suffered the punishment to which he was sentenced or such other punishment as by competent authority may have been substituted for the same or received a free pardon from His Majesty, and

Secondly, no person shall be registered as a voter who has within 12 months immediately preceding the 1st day of January in any year in which a register of voters is prepared, received any relief from public or parochial funds except such special relief as may be declared by the Governor by proclamation not to be relief for the purposes of this proviso, and

Thirdly, no person shall be registered as a voter unless he shall with his own hand have subscribed his name to his claim to be registered and written thereon the date of such subscription or, if he is incapacitated by blindness or any other physical cause from so doing such subscription and writing shall be performed on his behalf by the registering officer

\* \* \*

32 For the purpose of the election of members of the Council the Presidency shall form one electoral district

\* \* \*

## DOMINICA

Ordinance of the local Legislature reconstituting the Legislative Council—December 11, 1936.

The salient sections are identical with those of ANTIGUA (see page 498), with the following exceptions —

5 (b) The words ' the Colony or ' are omitted

28 (3) *reads* " is a returning officer of the district for which the election is held, or "

31 (1) *reads* " Every person shall be entitled to be registered as a voter for any one electoral district in which he is resident, and when registered to vote at the election of members of the Council for the district in respect of which he is registered who—"

32 reads: "For the purpose of the election of members of the Council the Presidency shall be divided into five electoral districts as follows :—

\*                      \*                      \*

Each electoral district shall be represented on the Council by one member."

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## MONTserrat

Ordinance of the local Legislature reconstituting the Legislative Council—December 11, 1936.

The salient sections are identical with those of ANTIGUA (see page 498), except that section 4 provides for two nominated members and four elected members, and "Commissioner" is substituted throughout for "Administrator".

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## ST. CHRISTOPHER AND NEVIS

Ordinance of the local Legislature reconstituting the Legislative Council—December 11, 1936.

With the exception of section 32, the salient sections are identical with those of ANTIGUA (see page 498), with the modifications reproduced under DOMINICA.

Section 32 reads as follows :—"For the purpose of the election of members of the Council, the Presidency shall be divided into three electoral districts, which shall be represented in the Council as follows :—

- (1) The island of Saint Christopher—by three elected members  
 (2) The island of Nevis—by one elected member  
 (3) The island of Anguilla and all small islands which are adjacent thereto and form part of the Presidency—by one elected member "

## MALAYA STRAITS SETTLEMENTS

- 1 Letters Patent constituting the Office of Governor and Commander-in-Chief —Westminster, February 17, 1911  
 Text in *Statutory Rules and Orders*, 1911, page 459

### *Amendments*

#### LETTERS PATENT

- |                            |   |
|----------------------------|---|
| Westminster August 18 1924 | Text in <i>Statutory Rules and Orders</i> , 1924, page 1889 |
| Westminster March 18 1935  | Text in <i>Statutory Rules and Orders</i> , 1935, page 1798 |
| Westminster July 19, 1937  | Text in <i>Statutory Rules and Orders</i> 1937, page 2418   |

- 2 Royal Instructions to the Governor and Commander-in-Chief —St James's, August 18, 1924

### *Amendments*

#### ADDITIONAL INSTRUCTIONS

- St James's, February 23, 1931  
 St James s, February 12, 1932  
 St James's, July 19, 1937

2. Royal Instructions, 1924 (as amended 1931, 1932 and 1937).

2. The Executive Council of our Settlements shall consist of the senior military officer for the time being in command of our regular troops within our Settlements (if not below the rank of lieutenant-colonel), the persons for the time being lawfully discharging the functions of Colonial Secretary of our Settlements, of Resident Councillor, Penang, of Attorney-General, of Financial Secretary, and of Resident Councillor, Malacca, who shall be styled "*ex officio* members" of the Executive Council, and such other persons holding office in the public service of our Settlements as the Governor in pursuance of instructions from us through one of our Principal Secretaries of State may from time to time appoint under the Public Seal of our Settlements, who shall be styled "official members" of the Executive Council, and further of such persons not holding office in the public service of our Settlements and not exceeding three in number at any one time as the Governor, in pursuance of instructions from us through one of our Principal Secretaries of State, may from time to time appoint under the said Public Seal, who shall be styled "unofficial members" of the Executive Council.

\* \* \*

9. The Governor may summon a meeting of the Executive Council in any of our Settlements where he may happen to be, and such meeting shall be competent to transact business, notwithstanding that it has not been practicable to summon more than two members to attend.

\* \* \*

15. The Legislative Council of our Settlements shall consist of the Governor as president, eleven *ex officio* members, two official members, two elected unofficial members and eleven nominated unofficial members.

16. The *ex officio* members of the Legislative Council shall be the senior military officer for the time being in command of our regular troops within our Settlements, and the persons for the time being lawfully discharging the functions of Colonial Secretary of our Settlements, of Resident Councillor, Penang, of Attorney-General, of Financial Secretary, of Director of Public Works of our Settlements, of Resident Councillor, Malacca, of Director of Education, of Secretary for Chinese Affairs, of Director of Medical Services, and of Commissioner of Lands in our Settlements.

17. The official members of the Legislative Council shall be such persons holding office in the public service of our Settlements as the Governor in pursuance of instructions from us through one of our Principal Secretaries of State may from time to time appoint by an instrument under the Public Seal of our Settlements.

If any such member shall cease to hold office in the said public service his seat in the Council shall thereupon become vacant. Every such member shall in any case vacate his seat at the end of 3 years from the date of the instrument by which or in pursuance of which he is appointed unless it is otherwise provided by that instrument provided that if any such member is provisionally appointed as hereinafter provided to fill a vacant seat in the Council and his provisional appointment is immediately followed by his definitive appointment, the aforesaid period of 3 years shall be reckoned from the date of the instrument provisionally appointing him. Every such official member shall be eligible to be reappointed by the Governor by an instrument under the Public Seal of our Settlements for a further period or periods, no period exceeding 3 years, subject to our approval conveyed through one of our Principal Secretaries of State.

18 The unofficial members of the Legislative Council shall be British subjects not holding office in the public service of our Settlements and shall consist of seven European members, of whom two shall be elected and five shall be nominated, as hereinafter provided, and further of three Chinese members, one British Indian member, one representative of the Malay race, and one Eurasian member, all of whom shall be nominated as hereinafter provided.

19 Of the European elected unofficial members —One shall be elected by British members of the Chamber of Commerce, Singapore under such rules as may be promulgated by the said Chamber of Commerce with the approval of the Governor. One shall be elected by the British members of the Chamber of Commerce of Penang under such rules as may be promulgated by the said Chamber of Commerce with the approval of the Governor. The European elected unofficial members, elected as aforesaid, shall thereupon be appointed by the Governor by an instrument under the Public Seal. Every such member shall vacate his seat at the end of 3 years from the date of the instrument by which he is appointed unless it is otherwise provided by that instrument. Whenever the seat of an elected member has become vacant the Governor shall thereupon issue directions for the election in the manner aforesaid of a member in the place of the member whose seat has become vacant. If any member shall be re-elected in the manner aforesaid, he shall thereupon be reappointed by the Governor for a further term not exceeding 3 years in duration.

20 The nominated unofficial members of the Legislative Council shall be nominated by the Governor and shall be appointed by him by an instrument under the Public Seal subject to our confirmation or disallowance signified through one of our Principal Secretaries of State.

Of the European nominated unofficial members :—

One shall be nominated by the Governor from the residents of the Settlement of Penang. One shall be nominated by the Governor from the residents of the Settlement of Malacca. Three shall be nominated by the Governor from the residents of the Settlement of Singapore.

Of the three Chinese nominated unofficial members :—

One shall if possible be a resident of Singapore. One shall if possible be a resident of Penang. One shall if possible be a resident of Singapore or of Malacca.

\* \* \*

28. No person shall be capable of being elected an unofficial member of the Legislative Council, or having been elected and appointed by the Governor as provided in clause 19, shall sit or vote in the Council, who—

(1) Has been sentenced by any competent British court, whether of our Settlements or not, or by a competent court of any State in the Malay Peninsula under British protection, for any crime punishable by death or by imprisonment for a period exceeding one year, and has not received a free pardon from us or from the Ruler of such Malay State for the crime for which he has been so sentenced ; or

(2) Is an undischarged bankrupt, whether he has been declared a bankrupt by a court in our Settlements, or by any other British court, or by a competent court of any State in the Malay Peninsula under British protection ; or

(3) Has within 5 years before the election received charitable relief in our Settlements from any public source ; or

(4) Is of unsound mind ; or

(5) Is in receipt of salary payable out of the public revenue of our Settlements.

If any nominated or elected unofficial member of the Legislative Council shall become subject to any of the disqualifications (1), (2), (4) or (5), specified in this clause or shall receive charitable relief in our Settlements from any public source, or shall be absent from the sittings of the Council or from our Settlements for more than 3 consecutive months without leave from the Governor, or shall take any oath or make any declaration of allegiance to any foreign State or Power, the Governor may declare in writing that the seat



of such member at the Council is vacant, and *immediately* on the publication of such declaration he shall cease to be a member of the Council

\* \* \*

## FEDERATED MALAY PROTECTED STATES<sup>(1)</sup>

Agreement for the Reconstruction of the Federal Council—Kuala Lumpur, April 24, 1927

Text in *Federated Malay States Government Gazette* April 27 1927  
(Supplement)

Whereas an agreement was entered into between the High Commissioner for the Malay States acting on behalf of the Government of His Majesty the King Emperor of India and the Rulers of the Federated Malay States of Perak Selangor Negri Sembilan and Pahang and executed by the High Commissioner on the 20th day of October 1909 having been executed before that date by the said Rulers whereby it was agreed that a Council should be established to be known as the Federal Council of the Federated Malay States

And whereas the Federal Council was duly established accordingly

And whereas the constitution of the said Council was varied by two supplemental agreements entered into between the same parties and executed by the High Commissioner on the 7th day of November 1912 and the 9th day of July 1924 respectively having in each case been executed by the Rulers before the said date

And whereas the parties to the hereinbefore recited agreements desire to reconstitute the Federal Council and to define more clearly its powers and duties

---

(1) A Royal Commission dated March 16 1931 appointed the Officer for the time being administering the Government of the Straits Settlements to be High Commissioner for the Protected States (Perak, Selangor Negri Sembilan Pahang Johore Kedah Kelantan Trengganu and Perl's) in the Malay Peninsula

Royal Commissions dated December 10 1906 and March 18 1908 appointed the Officer for the time being administering the Government of the Straits Settlements to be High Commissioner for the Protected State of Brunei and British Agent for the States of North Borneo and Sarawak

It is hereby agreed by and between the said parties as follows :

1. From the date of the execution of this agreement the following shall be members of the Federal Council :

The High Commissioner.  
The Chief Secretary to Government.  
The Resident of Perak.  
The Resident of Selangor.  
The Resident of Negri Sembilan.  
The Resident of Pahang.  
The Legal Adviser.  
The Financial Adviser.  
The Principal Medical Officer.  
The Controller of Labour.  
The Director of Public Works.  
The Director of Education.

One other official to be nominated by the High Commissioner.

Eleven unofficial members to be nominated by the High Commissioner with the approval of His Majesty. At least four of such unofficial members shall, if possible, be Malays, selected one from each of the States.

- 2 If any unofficial member shall die or become incapable of discharging his functions as a member of the Council or be suspended or removed from his seat in the Council or be absent from the Federated Malay States or resign by writing under his hand, the High Commissioner may provisionally nominate a fit person to be temporarily a member of the Council, provided that every such nomination shall cease to have effect if and when the same be disallowed by His Majesty or on the termination of any such incapacity, suspension or absence as is hereinbefore referred to. Any provisional nomination may be at any time revoked by the High Commissioner.

3. If hereafter it should in the opinion of the High Commissioner be desirable to add to the Council one or more heads of public departments or one or more unofficial members he may do so subject to the approval of His Majesty and to the preservation of an official majority on the Council.

4. The official nominated by the High Commissioner under article 1 of this agreement and any head of a department nominated to the Council under the preceding article shall hold office so long as the High Commissioner shall think fit, and an unofficial member shall hold office for the term not exceeding 3 years for which he was nominated.

5. The High Commissioner shall be president of the Council and in his absence the Chief Secretary shall be president. In the case of an equality of votes the president shall have an additional or casting vote.

6 The Council shall not be disqualified from the transaction of business on account of any vacancies among the members thereof but the Council shall not be competent to act in any case unless (including the president) there be present at and throughout the meeting of the Council three members at the least

7 Suitable accommodation shall be provided at every meeting of the Council for any of the Rulers who may have signified their intention of being present

8 The Council may pass standing orders for the regulation of its proceedings and may when it thinks fit suspend such standing orders

9 The Council shall meet at least once in every year at a place to be appointed from time to time by the High Commissioner

10 The Council shall pass all laws intended to have force throughout the Federation. Laws passed by the Council shall be enacted in the following words: "It is hereby enacted by the Rulers of the Federated Malay States by and with the advice and consent of the Federal Council" and shall be signed by each of the Rulers before coming into force provided that the Yang di per Tuan Besar of the Negeri Sembilan shall sign on behalf of the Undang of the Negeri Sembilan

11 Any law passed or which may hereafter be passed by a State Council shall continue to have full force and effect in such State except in so far as it may be repugnant to the provisions of any law passed by the Federal Council

12 Estimates of revenue shall be submitted to the Council and all expenditure shall be sanctioned by the Council by resolution or supply bill provided that the Council may by resolution allocate to each State every year a lump sum to be expended without further reference to the Council on such services as the Council may from time to time determine

13 Subject to the provisions of article 12 questions connected with the Mohammedan religion mosques political pensions native Chiefs and Penghulus and any other questions which in the opinion of the High Commissioner affect the rights and prerogatives of any of the Rulers or which for other reasons he considers should properly be dealt with only by the State Councils shall be exclusively reserved to the State Councils

14 Nothing in this agreement shall affect the validity of any act done or law passed by the Federal Council as constituted before the execution of this agreement

15 Nothing in this agreement is intended to curtail any of the powers or authority now held by any of the Rulers in their respective

States, nor does it alter the relations now existing between any of the States named and the British Empire as established by previous treaties.

In witness whereof the parties hereto have signed the present agreement and have affixed their Public Seals thereto.

Done at Kuala Lumpur, the 24th day of April, 1927.

(Here follow the signatures and seals of

His Excellency Sir Laurence Nunns Guillemard, G.C.M.G., K.C.B.

His Highness Paduka Sri Sultan Iskandar Shah, K.C.M.G., K.C.V.O., ibni Idris, Sultan of Perak.

His Highness Ala'iddin Suleiman Shah, K.C.M.G., ibni Almerhum Raja Muda Musa, Sultan of Selangor.

His Highness Muhammad, K.C.M.G., K.C.V.O., ibni Almerhum Yam Tuan Antah, Yang di per Tuan Besar of Negri Sembilan.

His Highness Almoktasim Billah Al Sultan Abdullah, K.C.M.G., ibni Almerhum Al Sultan Ahmad, Sultan of Pahang.

Mamor bin Inche Kassim, C.B.E., Datoh Klana Petra of Sungei Ujong.

Kamat bin Leman, Datoh Penghulu of Johol.

Abdullah bin Panglima Muda, Datoh Penghulu of Jelebu.

Abdullah bin Haji Dahan, Datoh Penghulu of Rembau.

Tengku Mohamed bin Tengku Dewa, Tengku Besar of Tampin.)

## MALTA

1. Letters Patent constituting the Office of Governor and Commander-in-Chief and providing for the Government.  
—Westminster, August 12, 1936.

Text in *Statutory Rules and Orders*, 1936, Vol. II, page 3681.

2. Royal Instructions to the Governor and Commander-in-Chief.—St. James's, August 12, 1936.

.. .. .

- i. Letters Patent, 1936.

\* \* \*

5 There shall be a Lieutenant-Governor in and over Malta, and appointments to the said office shall be made by Commission under our Sign Manual and Signet

The Lieutenant-Governor shall do during our pleasure all things belonging to his office in accordance with such Commission as aforesaid and such instructions as may from time to time be given to him by us, under our Sign Manual and Signet, or through one of our Principal Secretaries of State, and in accordance with such Orders in Council and other laws as shall from time to time be in force in Malta

Whenever the office of Lieutenant Governor becomes vacant, or if the Lieutenant Governor is administering the Government of Malta, or is absent from Malta, or otherwise becomes incapable of, or is from any cause prevented from, performing the duties of his office, the Governor may by an instrument under the Public Seal of Malta appoint some fit and proper person to act provisionally as Lieutenant Governor. Any person so provisionally appointed shall do during our pleasure all things belonging to the office of Lieutenant-Governor in accordance with the terms of his appointment and such instructions and laws as aforesaid, and shall cease to act as Lieutenant Governor so soon as we shall have appointed another person to the said office by Commission under our Sign Manual and Signet or as the substantive holder of the office shall cease to administer the Government of Malta or shall return to Malta or shall again be able to perform the duties of the office, or as the Governor shall appoint another person to act provisionally as Lieutenant-Governor

\* \* \*

10 (1) The judges of the superior courts of Malta shall be appointed by the Governor in our name and on our behalf

(2) No person shall be qualified to be appointed a judge of the said courts unless during a period of not less than 12 years, or during periods amounting in the aggregate to not less than 12 years, he has either practised at the Bar or served as a magistrate in Malta, or has partly so practised and partly so served

(3) A judge of the said courts shall receive such remuneration as may be determined by the Governor from time to time

Provided that the remuneration of a judge shall not be diminished during his tenure of office

(4) A judge of the said courts shall vacate his office on his attaining the age of 65 years, and may be removed from his office by us on the ground of proved misbehaviour or incapacity

(5) The provisions of sub-sections (1) and (2) of this section shall not apply to a judge of the said courts who was appointed before the commencement of "The Malta Constitution Act, 1932" <sup>(1)</sup>

\* \* \*

17. We do reserve to ourselves, our heirs and successors, our and their right, with the advice of our or their Privy Council, from time to time to make laws for the peace, order and good government of Malta.

\* \* \*

20. (1) The English language, as the official language of the British Empire, and the Maltese language, as the language of the people of Malta, shall be the official languages of Malta.

(2) The English language shall be the official language of administration and the Maltese language shall be the official language of our courts of law in Malta.

Provided that it shall be lawful for the Governor to make provision by ordinance for the use of the English language in any proceedings before any court where any party or any accused person is a person who does not speak Maltese as the principal language to which he is accustomed.

(3) (i) The English text and the Maltese text of all laws shall be the only official texts of the law and if there shall be any conflict between the English and Maltese texts of any law the English text shall prevail.

(ii) All laws in force at the date on which these our Letters Patent come into operation, of which there is no Maltese text, shall be translated into Maltese; and until the translation of any such law shall be published by order of the Governor the English text thereof shall be the only official text.

21. (1) All persons in Malta shall have full liberty of conscience and the free exercise of their respective modes of religious worship.

(2) No person shall be subjected to any disability or excluded from holding any office by reason of his religious profession.

\* \* \*

## 2. Royal Instructions, 1936.

\* \* \*

4. The Executive Council of Malta shall consist of the persons for the time being lawfully discharging the functions of the respective offices of Lieutenant-Governor, of Legal Adviser to the Governor, of Treasury Counsel, of Treasurer and of Secretary to Government, who shall be styled "*ex officio* members" of the Executive Council, and of such other persons, not less than three in number at any one time (hereinafter referred to as "nominated members"), as the Governor, in pursuance of instructions from

us through one of our principal Secretaries of State, may from time to time appoint

Whenever upon any special occasion the Governor desires to obtain the advice of any person in Malta relating to affairs therein, he may summon for such special occasion any such person as an extraordinary member of the Executive Council

The members shall have seniority and precedence as we may specially assign, and, in default thereof, first the *ex officio* members in the order in which their offices are above mentioned and then the nominated members according to the priority of their respective appointments, or if appointed by the same instrument, according to the order in which they are named therein, and finally the extraordinary members

\* \* \*

## MAURITIUS

- 1 Letters Patent constituting the Office of Governor and Commander in-Chief —Westminster, September 11, 1913

Text in *Statutory Rules and Orders*, 1913, page 2372

### *Amendment*

LETTERS PATENT

Westminster, April 18, 1933

Text in *Statutory Rules and*

*Orders*, 1933, page 2097

- 2 Royal Instructions to the Governor and Commander in-Chief —St James's, September 11, 1913

### *Amendment*

ADDITIONAL INSTRUCTIONS

St James's April 18, 1933

- I Letters Patent, 1913 (as amended 1933)

\* \* \*

- 6 There shall be within the Colony a Council of Government, constituted as hereinafter mentioned

7. The Council shall consist of the Governor, of eight *ex officio* members, of ten elected members, and of nine nominated members.

The *ex officio* members shall be the senior military officer for the time being in command of our regular troops in the Colony, the persons for the time being lawfully discharging the functions of the respective offices of Colonial Secretary, Procureur General, Treasurer, Collector of Customs, Protector of Immigrants, Director of Public Works and Surveys, Director of the Medical and Health Department, or of such other offices as we may from time to time designate by Instructions under our Sign Manual and Signet.

The elected members shall be persons to be elected as herein-after provided.

The nominated members, of whom two-thirds shall be persons not holding any office in the public service of the Colony, shall be such persons, not exceeding nine in number at any one time, as are now members of the Council or as we may from time to time appoint by any instruction or warrant under our Sign Manual and Signet, or as the Governor in pursuance of instructions from us through one of our Principal Secretaries of State may from time to time appoint under the Public Seal of the Colony.

\* \* \*

9. No person shall be capable of being elected a member of the Council, or, having been elected, shall sit or vote in the Council, who—

(1) Is the holder of any office of emolument under the Crown, or under a municipal corporation within the Colony ; or

(2) Is a minister of religion ; or

(3) Is the returning officer of the district for which the election is held ; or

(4) Is not entitled to vote at the election of a member of the Council for some electoral district.

The term “minister of religion” in this clause means any clergyman, minister, priest, or other person who exercises spiritual functions or performs the offices of religion for or in respect to any Christian or other church, community, or body within the Colony.

The term “office of emolument” in this and the 18th clause does not extend to the mayor or any other member of a municipal corporation, and does not include a pension or other allowance to an officer who has ceased to be in the service of the Crown or of a municipal corporation. It shall not extend to the following persons if otherwise qualified to be elected members of the Council :—

- (i) Attorneys ;
- (ii) Auctioneers ;
- (iii) Brokers ;



- (iv) Land surveyors ,
- (v) Maritime (custom house) brokers ,
- (vi) Medical attendants on estate hospitals under ordinance No 12 of 1878 entitled " The Labour Ordinance 1878 " ,
- (vii) Notaries ,
- (viii) The standing counsel and the attorney of the municipal corporation

\* \* \*

21 Every male person shall be entitled to be registered in any year as a voter for any electoral district, and, when registered, to vote at the election of a member of the Council for such district, who is qualified as follows that is to say —

- (1) Has attained the age of 21 years
- (2) Is under no legal incapacity, and is in possession of his civil rights
- (3) Is a British subject by birth or naturalisation
- (4) Has resided in the Colony for 3 years at least previous to the date of registration, and possesses some one of the following qualifications —

(a) is on the 1st day of January in such year and has during the preceding 6 calendar months been the owner of immovable property within such district of the annual value of Rs 300 or the monthly value of Rs 25 above all charges and encumbrances affecting the same

(b) is at the date of registration paying and has for 6 calendar months previous to the 1st day of January in such year paid rent in respect of immovable property, situate within such district, at the rate of at least Rs 25 per month

(c) has for 3 calendar months previous to the 1st day of January in such year resided, or had his principal place of business or employment within such district, and is the owner of movable property within the Colony of the value of at least Rs 3,000

(d) is the husband of a wife, or the eldest son of a widow, possessing any one of the above qualifications

(e) has for 3 calendar months previous to the 1st day of January in such year resided, or had his principal place of business or employment within such district, and is in receipt of a yearly salary of at least Rs 600, or a monthly salary of at least Rs 50

(f) has for 3 calendar months previous to the 1st day of January in such year resided, or had his principal place of business or employment within such district, and pays licence duty to the amount of at least Rs 200 per annum

Provided—

(1) That no person shall be registered as a voter or be entitled to vote for the election of a member of the Council who has been

convicted of perjury in any court in our dominions, or who has been sentenced by any such court to death, or penal servitude, or imprisonment with hard labour or for a term exceeding 12 months, and has not either suffered the punishment to which he was sentenced or such other punishment as by competent authority may have been substituted for the same or received a free pardon from us.

(2) That no person shall be registered as a voter in any year who has within 12 calendar months immediately preceding the 1st day of January in that year received any relief from public or parochial funds.

(3) That no person shall be registered as a voter in any year unless he shall in the presence of the registering officer or of a magistrate with his own hand subscribe his name to his claim to be registered, and write thereon the date of such subscription, and the qualification in respect of which he claims to be registered.

(4) That no person claiming to be registered in the district in which he resides, in respect of either of the qualifications (c), (d), (e), (f), shall be registered in respect of the same qualification in the district in which he has his principal place of business or employment, or *vice versa*.

\* \* \*

47a. If the Governor shall consider that it is necessary in the interests of public order, public faith, or other essentials of good government that any bill, motion, resolution or vote proposed for decision in the Council should have effect, then if the Council fail to pass any such bill, motion, resolution or vote within such time as he may think reasonable and expedient, the Governor at any time within his discretion may, notwithstanding any provisions of these our Letters Patent or of any standing orders of the Council, declare that any such bill, motion, resolution or vote shall have effect, and thereupon the same shall have effect as if it had been passed by the Council, and in the case of any such bill the Governor may, subject to any Instructions under our Sign Manual and Signet, assent thereto in our name and on our behalf and sign the same in token of such assent. In making any such declaration the Governor shall inform the Council of his reasons therefor.

The Governor shall forthwith report to us through one of our Principal Secretaries of State every case in which he shall make any such declaration, and the reasons therefor.

If any member of the Council objects to any such declaration, he may, within 7 days of the making thereof, submit to the Governor a statement in writing of his reasons for so objecting, and a copy of such statement shall be appended to the report of the Governor required by this clause.

Any such motion, resolution or vote may be revoked by us through one of our Principal Secretaries of State and the Governor shall notify such revocation to the Council, and from the date of

such notification any such motion, resolution or vote so revoked shall cease to have effect, but without prejudice to anything lawfully done thereunder

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## 2 Royal Instructions, 1913 (as amended 1933).

\* \* \*

2 The Executive Council shall consist of the senior military officer for the time being in command of our regular troops within the Colony, the persons for the time being lawfully discharging the functions of the respective offices of Colonial Secretary, Procureur and Advocate General and Treasurer of the Colony, who shall be styled *ex officio* members of the said Council and of such other persons as the Governor, in pursuance of instructions from us through one of our Principal Secretaries of State, may from time to time appoint by instrument under the Public Seal of the Colony

If any person holding office in the service of the Government of the Colony who is appointed to be a member of the Council in pursuance of instructions from us as aforesaid, or provisionally by the Governor as hereinafter provided, shall thereafter cease to hold such office his seat in the Council shall thereupon become vacant

Any person not holding office in the service of the Government of the Colony who is appointed to be a member of the Council shall vacate his seat at the end of 3 years from the date of the instrument by which or in pursuance of which he is appointed, or at such earlier date as may be provided by that instrument. Provided that if any such member is provisionally appointed to fill a vacant seat in the Council and his provisional appointment is immediately followed by his definitive appointment, the aforesaid period of 3 years shall be reckoned from the date of the instrument provisionally appointing him. Every such member shall be eligible to be re-appointed by the Governor by an instrument under the Public Seal of the Colony for a further period or periods each not exceeding 3 years, subject to our approval conveyed through one of our Principal Secretaries of State

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## NIGERIA COLONY AND PROTECTORATE

1. Order in Council providing for the Establishment of a Legislative Council for the Colony and Protectorate.—London, November 21, 1922.

Text in *State Papers*, Vol. CXVI, page 249.

### *Amendment*

#### ORDER IN COUNCIL :

London, February 6, 1928 . . . . . Text in *State Papers*, Vol. CXXVIII, page 23.

2. Letters Patent constituting the Office of Governor and Commander-in-Chief of the Colony and providing for the Government thereof.—Westminster, December 9, 1922.

Text in *Statutory Rules and Orders*, 1922, page 1139.

### *Amendment*

#### LETTERS PATENT :

Westminster, October 21, 1935 . . . . . Text in *Statutory Rules and Orders*, 1935, page 1794.

3. Royal Instructions to the Governor and Commander-in-Chief of the Colony.—St. James's, December 9, 1922.

### *Amendments*

#### ADDITIONAL INSTRUCTIONS :

St. James's, February 17, 1928.

St. James's, August 11, 1933.

St. James's, October 21, 1935.

St. James's, May 19, 1936.

St. James's, April 20, 1937.

4. Order in Council providing for the Exercise of Jurisdiction in the Protectorate by the Governor and Commander-in-Chief of the Colony.—London, November 21, 1922.

Text in *State Papers*, Vol. CXVI, page 242.

### *Amendment*

#### ORDER IN COUNCIL :

London, October 3, 1935 . . . . . Text in *Statutory Rules and Orders*, 1935, page 477.

5. Royal Instructions to the Governor and Commander-in-Chief of the Protectorate.—St. James's, December 9, 1922.

*Amendments*

## ADDITIONAL INSTRUCTIONS

St James s February 17 1928

St James s October 21 1935

*See also* WEST AFRICA

## 1 Legislative Council Order in Council, 1922 (as amended 1928)

\* \* \*

4 The Council shall consist of —The Governor as president not more than thirty official members three elected unofficial members representing the municipal area of Lagos one elected unofficial member representing the municipal area of Calabar and not more than fifteen nominated unofficial members

5 The official members of the Council shall consist of the following persons —

(1) The *ex officio* members of the Executive Council

(2) The officers for the time being lawfully discharging the functions of Director of Marine of Comptroller of Customs of Administrator of the Colony and of Secretary for Native Affairs

The ten senior officers for the time being lawfully discharging the functions of Senior Resident or Resident in Nigeria

The officers for the time being lawfully discharging the functions of Deputy Chief Secretary to Government of Secretary Southern Provinces of Secretary Northern Provinces of General Manager of the Railway of Director of Public Works and of Director of Agriculture

(3) Such other persons holding public office in Nigeria not exceeding three in number at any one time (who shall be styled nominated official members ) as the Governor may from time to time by instrument under the Public Seal appoint subject to disallowance or confirmation by His Majesty signified through a Secretary of State Provided that if any nominated official member ceases to hold public office in Nigeria his seat upon the Council shall thereupon become vacant

6 The elected members of the Council shall be elected as follows —

(1) Three members by persons duly qualified as electors as hereinafter provided who are resident within the municipal area of Lagos

(2) One member by persons duly qualified as electors as hereinafter provided who are resident within the municipal area of Calabar

7. The nominated unofficial members of the Council shall be such persons not holding office in Nigeria as the Governor may, from time to time, by instrument under the Public Seal appoint, subject to disallowance or confirmation by His Majesty, signified through a Secretary of State.

Every such member shall vacate his seat at the end of 5 years from the date of the instrument by which he is appointed or at such earlier date as may be provided by that instrument.

Provided that if any such member is provisionally appointed, as hereinafter provided, to fill a vacant seat in the Council, and his provisional appointment is immediately followed by his definitive appointment, the aforesaid period of 5 years shall be reckoned from the date of the instrument provisionally appointing him.

Every such member shall be eligible to be re-appointed by the Governor for a further period not exceeding 5 years, subject to the approval of His Majesty, signified through a Secretary of State.

8. Whenever upon any special occasion the Governor wishes to obtain the advice of any person within Nigeria touching any matters about to be brought before the Council, he may by an instrument under the Public Seal of Nigeria appoint any such person to be, for such occasion, an extraordinary member of the Council.

\* \* \*

14. Any person (save as hereinafter excepted) who shall be registered as an elector for the election of elected members of the Council shall be qualified and entitled to be elected a representative of the municipal area of Lagos or of Calabar, as provided in article 6 of this Order.

15. No person shall be capable of being elected a member of the Council, or, having been elected, shall sit or vote in the Council, who—

(1) has been sentenced by any competent British court, whether of Nigeria or not, for any crime punishable by death, hard labour for any period, or imprisonment for a period exceeding one year, and has not received a free pardon from His Majesty for the crime for which he has been so sentenced ; or

(2) is an undischarged bankrupt, whether he has been declared a bankrupt by a court in Nigeria or by any other British court ; or

(3) has within 5 years before the election received charitable relief in Nigeria from any public source ; or

(4) is of unsound mind ; or

(5) is in receipt of salary payable out of the public revenue of Nigeria ; or

(6) is not registered as an elector.

\* \* \*

20 Every male person shall be entitled to be registered as an elector, and when registered to vote at the election of elected members of the Council, who—

(1) is a British subject, or a native of the Protectorate of Nigeria,

(2) is of the age of 21 years or upwards,

(3) has been ordinarily resident for the 12 months immediately preceding the date of registration in the municipal area for which the election is being held, and

(4) was during the calendar year immediately preceding in possession of a gross annual income, from all sources, of not less than £100

21 No person shall be entitled to be registered as an elector, or when registered to vote at the election of elected members of Council who—

(1) has been sentenced by any competent British court, whether of Nigeria or not, for any crime punishable by death, hard labour for any period, or imprisonment for any period exceeding one year and has not received a free pardon from His Majesty for the crime for which he has been so sentenced, or—

(2) is of unsound mind

\* \* \*

23 It shall be lawful for the Governor, with the advice and consent of the Council, to make laws for the peace, order, and good government of the Colony of Nigeria and for that portion of the Protectorate of Nigeria known as "the Southern Provinces" Such laws shall be styled "ordinances," and the enacting words shall be "Enacted by the Governor of Nigeria, with the advice and consent of the Legislative Council thereof"

The sanction of the Council shall also be required for all expenditure out of the funds and revenues of Nigeria in respect of that portion of the Protectorate of Nigeria known as "the Northern Provinces" Such sanction shall be signified by resolution of the Council

24 It shall be lawful for the Governor of the Colony of Nigeria, with the advice and consent of the Council, and the Governor of the Protectorate of Nigeria, from time to time by joint ordinance to provide for the peace, order, and good government of Nigeria, and of all persons therein, provided as follows —

(a) That such ordinances shall be subject to the advice and consent of the Council only so far as the provisions thereof relate to the Colony and to the Southern Provinces of the Protectorate, and such ordinances shall be expressed to be enacted by the Governor of the Colony and Protectorate of Nigeria, with the advice and

consent of the Council, so far as the provisions thereof relate to the Colony and to the said Provinces ;

(b) That subject to the foregoing proviso the provisions of " The Nigeria Protectorate Order in Council, 1922,"<sup>(1)</sup> relating to the making and establishing of ordinances by the Governor of the Protectorate for the Northern Provinces thereof, shall apply to all ordinances made under the authority of this article in all respects as if they were made under the authority of the said " Nigeria Protectorate Order in Council, 1922."

24a. It shall be lawful for the Governor of the Protectorate of Nigeria, with the advice and consent of the Council, from time to time by ordinance to provide for the peace, order and good government of the Protectorate of Nigeria, and of all persons therein, provided as follows :—

(a) That such ordinances shall be subject to the advice and consent of the Council only so far as the provisions thereof relate to the Southern Provinces of the Protectorate, and such ordinances shall be expressed to be enacted by the Governor of the Protectorate of Nigeria with the advice and consent of the Council so far as the provisions thereof relate to the said Provinces.

(b) That subject to the foregoing proviso the provisions of " The Nigeria Protectorate Order in Council, 1922," relating to the making and establishing of ordinances by the Governor of the Protectorate for the Northern Provinces thereof shall apply to all ordinances made under the authority of this article in all respects as if they were made under the authority of the said " Nigeria Protectorate Order in Council, 1922."

\* \* \*

### 3. Royal Instructions, 1922 (as amended to 1937).

\* \* \*

4. The Executive Council of the Colony shall consist of the following members, that is to say : The officers lawfully discharging the functions of Chief Secretary to the Government of Nigeria, of Chief Commissioner of the Northern Provinces of the Protectorate of Nigeria, of Chief Commissioner of the Southern Provinces of the Protectorate of Nigeria, of Attorney-General, of Financial Secretary, of Commandant of the Nigeria Regiment (Royal West African Frontier Force), of Director of Medical Services, of Director of Transport, and of Director of Education, who shall be styled "*ex officio* members " and such other persons as may from time to time be appointed by any instruction or warrant under our Sign Manual

(1) Page 524.



and Signet or as the Governor, in pursuance of instructions from us through one of our Principal Secretaries of State, may from time to time appoint by instrument under the Public Seal of the Colony, or as may be provisionally appointed by the Governor in the manner hereinafter provided

Provided that if any person holding public office in Nigeria who is appointed by us or by the Governor as aforesaid to be a member of the Executive Council shall cease to hold such public office he shall forthwith vacate his seat on the Executive Council

Whenever upon any special occasion the Governor desires to obtain the advice of any person in Nigeria touching our affairs therein, he may summon for such special occasion any such person as an extraordinary member of the Executive Council

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#### 4 Protectorate Order in Council, 1922 (as amended 1935)

4 The Governor and Commander-in Chief for the time being of the Colony of Nigeria (hereinafter called "the Governor") shall be the Governor and Commander in Chief of the Protectorate of Nigeria and he is hereby authorised, empowered and commanded to exercise on His Majesty's behalf all such powers and jurisdiction as His Majesty at any time before or after the passing of this Order had or may have within the said territories, and to that end to take or cause to be taken all such measures and to do or cause to be done all such matters and things therein as are lawful and as in the interest of His Majesty's service he may think expedient, subject to such instructions as he may from time to time receive from His Majesty or through a Secretary of State

\* \* \*

7 The Executive Council of the Colony of Nigeria shall be and be deemed to be the Executive Council of the Protectorate

\* \* \*

10 It shall be lawful for the Governor, from time to time, by ordinance, to provide for the administration of justice, the raising of revenue and generally for the peace, order and good government of the Northern Provinces of the Protectorate, and of all persons therein, including the prohibition and punishment of acts tending to disturb the public peace

\* \* \*

12 All ordinances whether passed by the Legislative Council or by the Governor as aforesaid shall be subject to the following conditions or provisos —

(1) Nothing in any such ordinance or ordinances contained shall take away or affect any rights secured to any natives in the Protectorate by any treaties or agreements made on behalf or with the sanction of Her Majesty Queen Victoria, His late Majesty King Edward VII, or of His Majesty, and all such treaties and agreements shall be and remain operative and in force, and all pledges and undertakings therein contained shall remain mutually binding on all parties to the same.

(2) In the making of ordinances any native laws by which the civil relations of any native Chiefs, tribes, or populations under His Majesty's protection are now regulated shall be respected, except so far as the same may be incompatible with the due exercise of His Majesty's power and jurisdiction, or clearly injurious to the welfare of the said natives.

(3) Every suit, action, complaint, matter, or thing which shall be depending in any court within the Protectorate at the commencement of this Order shall and may be proceeded with in such court in like manner as if this Order had not been passed.

If any ordinance to which the provisions of this article apply shall be in any respect repugnant to the provisions of this Order or of any other Order made by His Majesty in Council, such ordinance shall be read subject to such Order and shall to the extent of such repugnancy be absolutely void.

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## CAMEROONS

### UNDER BRITISH MANDATE

Order in Council providing for the Administration as Part of the Protectorate of Nigeria.—London, June 26, 1923.

Text in *State Papers*, Vol. CXVII, page 60.

#### *Amendment*

ORDER IN COUNCIL :

London, March 17, 1932 .. Text in *State Papers*, Vol. CXXXV, page 80.

Order in Council, 1923 (as amended 1932)

[The preamble, up to the part which is reproduced below, is identical, *mutatis mutandis*, with that of "The British Sphere of Togoland Order in Council, 1923" : see page 471.]

And whereas it is provided by article 9 of the said mandate<sup>(1)</sup> that the mandatory shall have full powers of administration and legislation in the area subject to the mandate, and that this area (hereinafter in this Order called "the Cameroons under British Mandate") shall be administered in accordance with the laws of the mandatory as an integral part of his territory and subject to the provisions of the mandate, and that the mandatory shall be at liberty to apply his laws to the territory under the mandate subject to the modifications required by local conditions, and to constitute the Cameroons under British Mandate into a customs, fiscal or administrative union or federation with the adjacent territories under his sovereignty or control, provided always that the measures adopted to that end do not infringe the provisions of the mandate

And whereas the Cameroons under British Mandate are adjacent to the Protectorate of Nigeria, and it is expedient that those parts of the Cameroons under British Mandate which adjoin the Northern and Southern Provinces of that Protectorate shall, subject to the provisions of the mandate, be administered as integral parts of the Northern Provinces and of the Southern Provinces respectively, and shall be constituted into a customs, fiscal and administrative union with that Protectorate

Now, therefore, His Majesty, by virtue of the powers by "The Foreign Jurisdiction Act, 1890,"<sup>(2)</sup> or otherwise in His Majesty vested, is pleased by and with the advice of his Privy Council to order and it is hereby ordered, as follows —

\* \* \*

3 The portion of the Cameroons under British Mandate which lie to the northward of the line described in the schedule<sup>(3)</sup> to this Order shall, subject to the provisions of the aforesaid mandate, be administered as if they formed part of the Northern Provinces of the Protectorate, and it shall be lawful for the Governor and Commander in Chief for the time being of the Protectorate (herein after called "the Governor"), from time to time by ordinance to provide for the administration of justice, the raising of revenue, and generally for the peace, order and good government of the said portions

4 The portion of the Cameroons under British Mandate which lies to the southward of the line described in the schedule to this Order shall, subject to the provisions of the aforesaid mandate be administered as if it formed part of the Southern Provinces of the Protectorate, and it shall be lawful for the Governor, by and with the advice and consent of the Legislative Council of Nigeria, from time to time by ordinance to provide for the administration of justice, the raising of revenue, and generally for the peace, order and good government of the said portion

<sup>(1)</sup> *State Papers* Vol CXVI page 817

<sup>(2)</sup> *Ibid* Vol LXXII page 656

<sup>(3)</sup> Not reproduced

5. In the exercise of the powers and authorities hereby conferred upon him, the Governor shall be governed by the provisions of the Orders of His Majesty in Council bearing date the 21st day of November, 1922, and known respectively as "The Nigeria Protectorate Order in Council, 1922,"<sup>(1)</sup> and "The Nigeria (Legislative Council) Order in Council, 1922,"<sup>(2)</sup> or of any Order or Orders amending the same, and of any other Order in Council relating to the Protectorate or the Cameroons under British Mandate, and by any instructions relating to the Protectorate which he may have received or any other instructions relating to the Protectorate or the Cameroons under British Mandate which he may receive from time to time from His Majesty or through a Secretary of State, and in any Order in Council or instructions relating to the Protectorate and in force at the date of the commencement of this Order, references to the Protectorate shall be deemed so far as may be necessary or appropriate for the purposes of this Order to include the Cameroons under British Mandate.

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## NORTHERN RHODESIA PROTECTORATE

1. Order in Council providing for the Administration.—  
London, February 20, 1924.

Text in *State Papers*, Vol. CXIX, page 41.

### *Amendments*

#### ORDERS IN COUNCIL :

London, April 30, 1926	..	..	Text in <i>State Papers</i> , Vol. CXXIII, page 145.
London, June 27, 1927	..	..	Text in <i>State Papers</i> , Vol. CXXVI, page 130.
London, November 1, 1928	..	..	Text in <i>State Papers</i> , Vol. CXXVIII, page 130.
London, May 19, 1931	..	..	Text in <i>State Papers</i> , Vol. CXXXIV, page 78.

<sup>(1)</sup> Page 524.

<sup>(2)</sup> Page 520.

- 2 Order in Council providing for the Constitution of the Legislative Council—London, February 20, 1924

Text in *State Papers* Vol CXIX page 36

*Amendments*

ORDERS IN COUNCIL

London May 7 1929  
CXIX page 39

Text in *State Papers* Vol

London July 29 1937  
Orders 1937 page 811

Text in *Statutory Rules and*

- 3 Royal Instructions to the Governor and Commander in Chief—St James's February 26, 1924

*Amendment*

ADDITIONAL INSTRUCTIONS

St James's March 9 1935

St James's August 16 1937

- 4 Ordinance of the local Legislature to provide for the Election of Members to the Legislative Council—June 4 1925

Text in *Northern Rhodesian Government Gazette* June 6 1925

*Amendments*

ORDINANCES

1929

Text as amended in *Laus of*

*Northern Rhodesia* Revised Edition 1930 page 154

November 30 1933

December 5 1933

December 28 1934

May 20 1935

November 20 1936

Text of 1933-36 amendments

in *Laus of Northern Nigeria* 1937 Supplement page 13

December 24 1937

- 1 Administration Order in Council, 1924 (as amended to 1931)

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27 (1) There shall be a court of record styled the High Court of Northern Rhodesia with full jurisdiction civil and criminal over all persons and over all matters within Northern Rhodesia subject to the provisions hereinafter contained with regard to native law and custom

(2) Such civil and criminal jurisdiction shall as far as circumstances admit, be exercised upon the principles of and in conformity with the substance of the law for the time being in force in and

for England, and with the powers vested in and according to the course of procedure and practice observed by and before courts of justice and justices of the peace in England, according to their respective jurisdictions and authorities, except so far as such law may be applicable or may have been modified by any Order in Council, regulations or proclamation or may hereafter be modified by any Order in Council or ordinance :

Provided that no Act passed by the Parliament of the United Kingdom after the commencement of "The Northern Rhodesia Order in Council, 1911,"<sup>(1)</sup> shall be deemed to apply to the said Territory, unless it shall have been applied thereto since the commencement of the said Order, or shall hereafter be applied thereto, by any law or ordinance for the time being in force in the said Territory.

(3) The High Court shall have a seal, bearing the style of the Court and such device as a Secretary of State from time to time approves, but until such seal is provided, the seal or stamp now in use may be used instead thereof.

(4) The High Court shall sit at such place or places as the Governor may appoint.

\* \* \*

29. If any sentence of death is pronounced by or by direction of the High Court, a copy of the evidence shall be transmitted to the Governor ; and the sentence shall not be carried into effect until confirmed by him. The Governor may signify his confirmation by telegraph.

\* \* \*

32. Courts subordinate to the High Court and courts of special jurisdiction may be constituted by or under the provisions of any ordinance as occasion requires.

33. Provision may be made by ordinance for the hearing and determining of appeals from any such court by the High Court or otherwise.

\* \* \*

36. In civil cases between natives every court shall—

(a) be guided by native law so far as it is applicable and is not repugnant to natural justice or morality or inconsistent with any Order in Council, ordinance or proclamation or any regulation or rule made under any Order in Council, ordinance or proclamation, and shall—

(b) decide all such cases according to substantial justice without undue regard to technicalities of procedure and without

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<sup>(1)</sup> *State Papers*, Vol. CVI, page 463.

delay In all other respects the court shall follow as far as possible the procedure observed in similar cases in England

\* \* \*

40 No conditions, disabilities, or restrictions which do not equally apply to persons of European descent shall, without the previous consent of a Secretary of State, be imposed upon natives (save in respect of the supply of arms, ammunition and liquor), by any proclamation, regulation or other instrument issued under the provisions of any law, unless such conditions, disabilities, or restrictions shall have been explicitly prescribed, defined and limited in such law

41 (1) It shall not be lawful for any purpose whatever to alienate from the Chief and people of the Barotse the territory reserved from prospecting by virtue of the concession from Lewanika to the British South Africa Company, dated the 17th day of October, 1900, and the 11th day of August, 1909

(2) All rights reserved to or for the benefit of natives by the aforesaid concessions as approved by the Secretary of State shall continue to have full force and effect

42 A native may acquire, hold encumber, and dispose of land on the same conditions as a person who is not a native, but no contract for encumbering or alienating land the property of a native shall be valid unless the contract is made in the presence of a magistrate is attested by him, and bears a certificate signed by him stating that the consideration for the contract is fair and reasonable and that he has satisfied himself that the native understands the transaction

43 (1) No native shall be removed from any kraal, or from any land assigned to him for occupation, except after full inquiry by, and by order of, the Governor

(2) If any person without such order removes or attempts to remove any native from any kraal or from any land unless in execution of the process of a competent court, he shall, in addition to any other proceeding to which he is liable be guilty of an offence against this Order, and on conviction before the High Court shall be liable to imprisonment with or without hard labour for any period not exceeding 2 years, or to a fine not exceeding £100, or to both

(3) Nothing in this section contained shall be deemed to limit or affect the exercise by the Chief of the Barotse of his authority in tribal matters, or to prohibit the removal of natives from any kraal or land assigned to them, where such removal is authorised by any law for the time being in force relating to public health, provided that other suitable land be forthwith assigned to them in lieu of that from which they have been removed

44. The Governor may refer any question relating to natives for report to any judge of the High Court, and the judge shall thereupon make such enquiry as he thinks fit, and shall report to the Governor the result of such enquiry.

45. In case of a revolt against the Government, or other misconduct committed by a native Chief or tribe, the Governor may, with the approval of a Secretary of State, impose a reasonable fine upon the offender.

46. No new railway shall be constructed in the Territory save under the provisions of any Order of His Majesty in Council or of any ordinance giving special authority in that behalf.

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## 2. Legislative Council Order in Council, 1924 (as amended 1929 and 1937).

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3. The Council shall consist of the Governor as president, five *ex officio* members, nominated official members not exceeding four in number, and seven elected unofficial members.

4. The *ex officio* members of the Council shall be the persons for the time being lawfully discharging the functions of Chief Secretary to the Government, of Attorney-General, of Financial Secretary, of Senior Provincial Commissioner, and of Director of Medical Services.

5. The nominated official members of the Council shall be such persons holding office in the public service of the Territory as the Governor may from time to time appoint by an instrument under the Public Seal subject to disallowance or confirmation of His Majesty signified through a Secretary of State. They shall hold their places in the Council during His Majesty's pleasure and shall in any case vacate their seats at the next dissolution of the Council after their appointment, but may be reappointed: provided that if any nominated official member of the Council ceases to hold office in the public service of the Territory, his seat in the Council shall become vacant.

6. The elected unofficial members of the Council shall be such persons as may be elected in accordance with the provisions of any such ordinance as shall be enacted in the Territory for that purpose or any ordinance amending the same.

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### 3 Royal Instructions, 1924 (as amended 1935 and 1937)

\* \* \*

4 The Executive Council of the Territory shall consist of the persons for the time being lawfully discharging the functions of Chief Secretary to the Government, of Attorney-General of Financial Secretary, of Senior Provincial Commissioner and of Director of Medical Services, who shall be styled "*ex officio* members" of the Executive Council, and such other persons holding office in the public service of the Territory as the Governor in pursuance of instructions from us, through one of our Principal Secretaries of State, may from time to time appoint by an instrument under the Public Seal of the Territory, who shall be styled "official members" of the Executive Council and further of such persons (if any) not holding office in the public service of the Territory as the Governor in pursuance of instructions from us, through one of our Principal Secretaries of State, may from time to time appoint by an instrument under the Public Seal of the Territory, who shall be styled "unofficial members" of the Executive Council. Provided that if any official member of the Council shall cease to hold office in the public service of the Territory his seat in the Council shall thereupon become vacant.

Whenever upon any special occasion the Governor desires to obtain the advice of any person within the Territory relating to affairs therein he may, by an instrument under the Public Seal of the Territory, summon for such special occasion any such person as an extraordinary member of the Executive Council.

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### 4 Legislative Council Ordinance, 1925 (as amended to 1937)

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9 (1) Every man being a British subject and not being under the age of 21 years shall be entitled to have his name entered on the register of voters of the electoral area in which he resides.

Provided that for a period of not less than 18 months immediately prior to the date of his application to have his name entered on the register of votes he—

(a) has occupied within the electoral area, either solely or jointly with others, a house, warehouse, shop or other building

being either separately or jointly with any land occupied therewith, within the electoral area, of the value of £250 ;

Provided that in the case of joint occupation the share of each joint occupier shall be of the value of not less than £250 ; or

(b) has been the owner of plant and tools of the value of £250, erected or situated on a block of reef claims, alluvial claim or coal location claim, registered in his name under the Mining Law, situate within the electoral area ; or

(c) has been in the *bonâ fide* receipt in the Territory of salary or wages at the rate of not less than £200 per annum : in calculating the amount of such salary or wages, board and lodging received in part payment of services rendered shall be included and deemed to be of the value of £50 :

Provided that no person shall be entitled to be registered by reason of his sharing in any communal or tribal occupation of lands or buildings unless he shall have been in actual occupation for the above-mentioned period of 18 months of a house or other building, whether situated or not situated on land under communal or tribal tenure, which house or building, separately or together with any land occupied therewith held upon other than tribal or communal tenure, shall be of the value of at least £250 ; all land allotted and held under title within any area which has been or may hereafter be set apart as a native reserve or location shall be deemed to be held under tribal or communal tenure.

(2) Every married woman not being under the age of 21 years, other than a woman married under any system permitting of polygamy, shall for the purposes of the last preceding sub-section be deemed to possess the same occupation and salary qualification as her husband if she is residing with her husband and does not possess the said qualifications in her own right.

(3) Every person being a British subject and not being under the age of 21 years and not being a woman married under any system permitting of polygamy shall be entitled to have his name entered on the register of voters of the electoral area in which he resides if he is the owner for his own use and benefit of real or personal property or both in the Territory of the value of £2,000 over and above all charges and encumbrances affecting the same, and has resided in the Territory for a period or periods amounting in the aggregate to at least 30 months during the 4 years immediately preceding the date of his application to have his name entered on the register of voters.

10. No person shall be entitled to have his name registered on any register of voters—

(1) who is unable to fill up the form of application in his own handwriting, or who, if required so to do by the registering officer,

shall be unable to write from dictation 50 words in the English language ,

(2) who has within 5 years before the date of his application to have his name entered on the register of voters been convicted of any crime and sentenced to imprisonment with hard labour without the option of a fine or to any greater punishment, and has not received a free pardon , or

(3) who is of unsound mind ,

(4) who has received relief from any public funds whatsoever within 12 months of his application to have his name entered on the register ,

(5) has been declared bankrupt or insolvent by a competent court in the Territory or elsewhere and has not received his discharge ,

(6) is suffering from any disqualification provided for the time being by any enactment

11 No person shall be entitled to be registered as a voter or to vote in more than one electoral area or to vote more than once at any election

\* \* \*

13 (1) Subject to the provisions hereinafter contained any person who is qualified to be registered and is registered as a voter for any electoral area shall be eligible for election as a member

(2) A person shall be disqualified for election as a member or having been elected, from sitting and voting in the Council, if such person—

(a) has not resided in the Territory for a period or periods amounting in the aggregate to at least 30 months during the 4 years immediately preceding the date on which he is nominated as a candidate ,

(b) is in the permanent employment of the Government or is serving the Government for a term of years ,

(c) has been convicted of any crime punishable with imprisonment for a term of 6 months or exceeding 6 months and has not received a pardon provided that the Governor in Council may in any particular case remove such disqualification ,

(d) has within 12 months before being nominated as a candidate received relief from any public funds whatsoever within the Territory or elsewhere ,

(e) has been declared bankrupt or insolvent by a competent court in the Territory or elsewhere or made a composition or arrangement with his creditors provided that such disqualification shall cease when the debtor has obtained his discharge or paid his debts in full

(3) A candidate for election who has undertaken either directly or indirectly himself or by any one in trust for him any contract with a Government department for which the consideration exceeds £100 shall be disqualified for election unless at least 21 days before the date appointed for the election he shall—

(a) give particulars of such contract to the returning officer who shall take such steps as he shall think fit to give publicity to the same ; and

(b) publish in the electoral area for which he is a candidate the fact of such contract giving particulars thereof. The publication shall be by means of a notice in a newspaper circulating in such electoral area.

(4) If any member after his election undertakes any such contract either directly or indirectly himself or by anyone in trust for him he shall forthwith inform the Clerk to the Council of the fact of such contract giving particulars thereof. The Clerk shall publish the fact in the *Gazette*.

(5) The election of any candidate who fails to comply with the provisions of sub-section (3) of this section shall be invalid and the seat shall be deemed to be vacant and the candidate shall be liable on conviction to the penalty specified in section 24 of this ordinance and shall be disqualified as therein provided.

(6) Any member who fails to comply with sub-section (4) of this section shall forfeit his seat and shall be liable on conviction to the penalty specified in section 24 of the ordinance and shall be disqualified as therein provided.

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## NYASALAND PROTECTORATE

1. Order in Council providing for the Exercise of Jurisdiction in the British Central Africa Protectorate.—  
London, August 11, 1902.

Text in *State Papers*, Vol. XCV, page 646.

### *Amendments*

#### ORDERS IN COUNCIL :

London, July 6, 1907 .. .. Text in *State Papers*, Vol. C,  
page 94.

London, December 21, 1907 . Text in *State Papers*, Vol C,  
page 125

London, January 17, 1912 Text in *State Papers*, Vol CV,  
page 128

- 2 Order in Council constituting the Office of Governor and Commander-in-Chief and providing for the Administration —London, July 6, 1907

Text in *State Papers*, Vol C, page 94

*Amendment*

ORDER IN COUNCIL

London April 30, 1926 Text in *State Papers*, Vol  
CXXIII, page 150

- 3 Royal Instructions to the Governor and Commander-in-Chief —St James's, August 9, 1907.

1. British Central Africa Order in Council, 1902 (as amended 1907 and 1912)

\* \* \*

7 (1) All rights of His Majesty in or in relation to any Crown lands shall vest in and may be exercised by the Commissioner for the time being in trust for His Majesty, or if the Secretary of State at any time with respect to all or any such lands by order under his hand so directs, in such other trustee or trustees for His Majesty as the Secretary of State may appoint

(2) The Secretary of State may, when he thinks fit, by a like order remove any trustee so appointed, and may appoint any new or additional trustee or trustees

(3) The Commissioner, or such other trustee or trustees, may make grants or leases of any Crown lands, or may permit them to be temporarily occupied, on such terms and conditions as he or they may think fit, subject to the provisions of any ordinance

(4) All mines and minerals being in, under, or upon any lands in the occupation of any native tribe, or any members thereof, or of any person not possessed of the right to work such mines and minerals, shall vest in the Commissioner, or such trustee or trustees, in like manner as the mines and minerals being in, under, or upon any Crown lands

\* \* \*

15 (1) There shall be a court of record styled "His Majesty's High Court of British Central Africa" (in this Order referred to as "the High Court") with full jurisdiction, civil and criminal, over all persons and over all matters in the Protectorate

\* \* \*

18. (1) Courts subordinate to the High Court and courts of special jurisdiction may be constituted by or under the provisions of any ordinance as occasion requires.

(2) Provision may be made by ordinance for the hearing and determining of appeals from any such court by the High Court or otherwise.

\* \* \*

20. In all cases, civil and criminal, to which natives are parties, every court (a) shall be guided by native law so far as it is applicable and is not repugnant to justice and morality or inconsistent with any Order in Council or ordinance, or any regulation or rule made under any Order in Council or ordinance; and (b) shall decide all such cases according to substantial justice without undue regard to technicalities of procedure and without undue delay.

21. If any sentence of death is pronounced by the High Court, a copy of the evidence shall be transmitted to the Commissioner, and the sentence shall not be carried into effect until confirmed by him.

\* \* \*

### 3. Royal Instructions, 1907.

\* \* \*

3. The Executive Council of the Protectorate shall consist of the persons for the time being lawfully discharging the functions of Government Secretary, of Treasurer, and of Attorney-General, who shall be styled "*ex officio* members" of the Executive Council, and such other persons as we may from time to time appoint by any instruction or warrant under our Sign Manual and Signet, or through one of our Principal Secretaries of State, or as the Governor may provisionally appoint in the manner hereafter provided.

Whenever upon any special occasion the Governor desires to obtain the advice of any persons within the Protectorate relating to affairs therein, he may, by an instrument under the Public Seal of the Protectorate, summon for such special occasion any such persons as extraordinary members of the Executive Council.

\* \* \*

14. The Legislative Council of the Protectorate shall consist of the Governor, the persons from time to time lawfully discharging the functions of Government Secretary, of Treasurer, and of Attorney-General, who shall be styled "*ex officio* members" of the Legislative Council, and such other persons holding office in the Protectorate as we may from time to time appoint by any instructions or warrants under our Sign Manual and Signet, or through one of our Principal Secretaries of State, or as the Governor may provisionally appoint in the manner hereinafter provided, who shall be styled "official

members of the Legislative Council and further of such person not holding office in the Protectorate, as the Governor in pursuance of any instructions from us through one of our Principal Secretaries of State may from time to time appoint by an instrument under the Public Seal of the Protectorate, who shall be styled 'unofficial members of the Legislative Council'

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## PALESTINE MANDATED TERRITORY

- 1 Mandate for the Administration conferred on His Britannic Majesty and confirmed and defined by the Council of the League of Nations—London, July 24, 1922

Text in *State Papers* Vol CXVI page 842

- 2 Order in Council providing for the Administration—London August 10 1922

Text in *State Papers*, Vol CXVI page 204

### *Amendments*

#### PROCLAMATIONS OF THE HIGH COMMISSIONER

March 2 1923

April 27 1923

#### ORDERS IN COUNCIL

London May 4 1923

Text in *State Papers* Vol

CXVII page 36

Sandringham February 7 1933

Text in *State Papers* Vol

CXCVI page 182

London February 21 1935

Text in *Statutory Rules*

and Orders 1935 page 520

- 3 Order in Council providing for the Election of Members to the Legislative Council—London, August 10, 1922

Text in *State Papers* Vol CXVI page 224

- 4 Order in Council providing for Appeals to His Majesty in Council—London, October 9, 1924

Text in *State Papers* Vol CXIX page 204

- 5 Royal Instructions to the High Commissioner and Commander-in-Chief—St James's, January 1, 1932

Text in *Laws of Palestine*, Revised Edition 1934 Vol III page 2659

## I. Mandate, 1922.

*The Council of the League of Nations:*

Whereas the Principal Allied Powers have agreed, for the purpose of giving effect to the provisions of article 22 of the Covenant of the League of Nations,<sup>(1)</sup> to entrust to a mandatory selected by the said Powers the administration of the territory of Palestine, which formerly belonged to the Turkish Empire, within such boundaries as may be fixed by them; and

Whereas the Principal Allied Powers have also agreed that the mandatory should be responsible for putting into effect the declaration originally made on November 2nd, 1917, by the Government of His Britannic Majesty, and adopted by the said Powers, in favour of the establishment in Palestine of a national home for the Jewish people, it being clearly understood that nothing should be done which might prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country; and

Whereas recognition has thereby been given to the historical connection of the Jewish people with Palestine and to the grounds for reconstituting their national home in that country; and

Whereas the Principal Allied Powers have selected His Britannic Majesty as the mandatory for Palestine; and

Whereas the mandate in respect of Palestine has been formulated in the following terms and submitted to the Council of the League for approval; and

Whereas His Britannic Majesty has accepted the mandate in respect of Palestine and undertaken to exercise it on behalf of the League of Nations in conformity with the following provisions; and

Whereas by the afore-mentioned article 22 (paragraph 8), it is provided that the degree of authority, control or administration to be exercised by the mandatory, not having been previously agreed upon by the members of the League, shall be explicitly defined by the Council of the League of Nations;

Confirming the said mandate, defines its terms as follows:

Art. 1. The mandatory shall have full powers of legislation and of administration, save as they may be limited by the terms of this mandate.

2. The mandatory shall be responsible for placing the country under such political, administrative and economic conditions as will secure the establishment of the Jewish national home, as laid down in the preamble, and the development of self-governing institutions, and also for safeguarding the civil and religious rights of all the inhabitants of Palestine, irrespective of race and religion.

(1) *State Papers*, Vol. CXII, page 13.



3 The mandatory shall, so far as circumstances permit, encourage local autonomy

4 An appropriate Jewish agency shall be recognised as a public body for the purpose of advising and co operating with the administration of Palestine in such economic, social and other matters as may affect the establishment of the Jewish national home and the interests of the Jewish population in Palestine, and, subject always to the control of the administration, to assist and take part in the development of the country

The Zionist organisation, so long as its organisation and constitution are in the opinion of the mandatory appropriate, shall be recognised as such agency It shall take steps in consultation with His Britannic Majesty's Government to secure the co operation of all Jews who are willing to assist in the establishment of the Jewish national home

5 The mandatory shall be responsible for seeing that no Palestine territory shall be ceded or leased to, or in any way placed under the control of, the Government of any foreign Power

6 The administration of Palestine, while ensuring that the rights and position of other sections of the population are not prejudiced, shall facilitate Jewish immigration under suitable conditions and shall encourage in co operation with the Jewish agency referred to in article 4, close settlement by Jews on the land, including State lands and waste lands not required for public purposes

7 The administration of Palestine shall be responsible for enacting a nationality law There shall be included in this law provisions framed so as to facilitate the acquisition of Palestine citizenship by Jews who take up their permanent residence in Palestine

8 The privileges and immunities of foreigners, including the benefits of consular jurisdiction and protection as formerly enjoyed by capitulation or usage in the Ottoman Empire, shall not be applicable in Palestine

Unless the Powers whose nationals enjoyed the afore-mentioned privileges and immunities on August 1st, 1914, shall have previously renounced the right to their re establishment, or shall have agreed to their non application for a specified period, these privileges and immunities shall, at the expiration of the mandate, be immediately re-established in their entirety or with such modifications as may have been agreed upon between the Powers concerned

9 The mandatory shall be responsible for seeing that the judicial system established in Palestine shall assure to foreigners, as well as to natives, a complete guarantee of their rights

Respect for the personal status of the various peoples and communities and for their religious interests shall be fully guaranteed In particular, the control and administration of wakfs shall be

exercised in accordance with religious law and the dispositions of the founders.

10. Pending the making of special extradition agreements relating to Palestine, the extradition treaties in force between the mandatory and other foreign Powers shall apply to Palestine.

11. The administration of Palestine shall take all necessary measures to safeguard the interests of the community in connection with the development of the country, and, subject to any international obligations accepted by the mandatory, shall have full power to provide for public ownership or control of any of the natural resources of the country or of the public works, services and utilities established or to be established therein. It shall introduce a land system appropriate to the needs of the country, having regard, among other things, to the desirability of promoting the close settlement and intensive cultivation of the land.

The administration may arrange with the Jewish agency mentioned in article 4 to construct or operate, upon fair and equitable terms, any public works, services and utilities, and to develop any of the natural resources of the country, in so far as these matters are not directly undertaken by the administration. Any such arrangements shall provide that no profits distributed by such agency, directly or indirectly, shall exceed a reasonable rate of interest on the capital, and any further profits shall be utilised by it for the benefit of the country in a manner approved by the administration.

12. The mandatory shall be entrusted with the control of the foreign relations of Palestine and the right to issue exequaturs to consuls appointed by foreign Powers. He shall also be entitled to afford diplomatic and consular protection to citizens of Palestine when outside its territorial limits.

13. All responsibility in connection with the Holy Places and religious buildings or sites in Palestine, including that of preserving existing rights and of securing free access to the Holy Places, religious buildings and sites and the free exercise of worship, while ensuring the requirements of public order and decorum, is assumed by the mandatory, who shall be responsible solely to the League of Nations in all matters connected herewith, provided that nothing in this article shall prevent the mandatory from entering into such arrangements as he may deem reasonable with the administration for the purpose of carrying the provisions of this article into effect; and provided also that nothing in this mandate shall be construed as conferring upon the mandatory authority to interfere with the fabric or the management of purely Moslem sacred shrines, the immunities of which are guaranteed.

14. A special commission shall be appointed by the mandatory to study, define and determine the rights and claims in connection with

the Holy Places and the rights and claims relating to the different religious communities in Palestine. The method of nomination, the composition and the functions of this commission shall be submitted to the Council of the League for its approval, and the commission shall not be appointed or enter upon its functions without the approval of the Council.

15 The mandatory shall see that complete freedom of conscience and the free exercise of all forms of worship, subject only to the maintenance of public order and morals, are ensured to all. No discrimination of any kind shall be made between the inhabitants of Palestine on the ground of race, religion or language. No person shall be excluded from Palestine on the sole ground of his religious belief.

The right of each community to maintain its own schools for the education of its own members in its own language, while conforming to such educational requirements of a general nature as the administration may impose, shall not be denied or impaired.

16 The mandatory shall be responsible for exercising such supervision over religious or eleemosynary bodies of all faiths in Palestine as may be required for the maintenance of public order and good government. Subject to such supervision, no measures shall be taken in Palestine to obstruct or interfere with the enterprise of such bodies or to discriminate against any representative or member of them on the ground of his religion or nationality.

17 The administration of Palestine may organise on a voluntary basis the forces necessary for the preservation of peace and order, and also for the defence of the country, subject, however, to the supervision of the mandatory, but shall not use them for purposes other than those above specified save with the consent of the mandatory. Except for such purposes no military, naval or air forces shall be raised or maintained by the administration of Palestine.

Nothing in this article shall preclude the administration of Palestine from contributing to the cost of the maintenance of the forces of the mandatory in Palestine.

The mandatory shall be entitled at all times to use the roads, railways and ports of Palestine for the movement of armed forces and the carriage of fuel and supplies.

18 The mandatory shall see that there is no discrimination in Palestine against the nationals of any State member of the League of Nations (including companies incorporated under its laws) as compared with those of the mandatory or of any foreign State in matters concerning taxation, commerce or navigation, the exercise of industries or professions, or in the treatment of merchant vessels or civil aircraft. Similarly, there shall be no discrimination in

Palestine against goods originating in or destined for any of the said States, and there shall be freedom of transit under equitable conditions across the mandated area.

Subject as aforesaid and to the other provisions of this mandate, the administration of Palestine may, on the advice of the mandatory, impose such taxes and customs duties as it may consider necessary, and take such steps as it may think best to promote the development of the natural resources of the country and to safeguard the interests of the population. It may also, on the advice of the mandatory, conclude a special customs agreement with any State the territory of which in 1914 was wholly included in Asiatic Turkey or Arabia.

19. The mandatory shall adhere on behalf of the administration of Palestine to any general international conventions already existing, or which may be concluded hereafter with the approval of the League of Nations, respecting the slave traffic, the traffic in arms and ammunition, or the traffic in drugs, or relating to commercial equality, freedom of transit and navigation, aerial navigation and postal, telegraphic and wireless communication or literary, artistic or industrial property.

20. The mandatory shall co-operate on behalf of the administration of Palestine, so far as religious, social and other conditions may permit, in the execution of any common policy adopted by the League of Nations for preventing and combating disease, including diseases of plants and animals.

21. The mandatory shall secure the enactment within 12 months from this date, and shall ensure the execution of a law of antiquities based on the following rules. This law shall ensure equality of treatment in the matter of excavations and archaeological research to the nations of all States members of the League of Nations.

(1) "Antiquity" means any construction or any product of human activity earlier than the year A.D. 1700.

(2) The law for the protection of antiquities shall proceed by encouragement rather than by threat.

Any person who, having discovered an antiquity without being furnished with the authorisation referred to in paragraph (5), reports the same to an official of the competent department, shall be rewarded according to the value of the discovery.

(3) No antiquity may be disposed of except to the competent department, unless this department renounces the acquisition of any such antiquity.

No antiquity may leave the country without an export licence from the said department.

(4) Any person who maliciously or negligently destroys or damages an antiquity shall be liable to a penalty to be fixed.

(5) No clearing of ground or digging with the object of finding antiquities shall be permitted, under penalty of fine, except to persons authorised by the competent department

(6) Equitable terms shall be fixed for expropriation, temporary or permanent, of lands which might be of historical or archaeological interest

(7) Authorisation to excavate shall only be granted to persons who show sufficient guarantees of archaeological experience. The administration of Palestine shall not, in granting these authorisations, act in such a way as to exclude scholars of any nation without good grounds

(8) The proceeds of excavations may be divided between the excavator and the competent department in a proportion fixed by that department. If division seems impossible for scientific reasons, the excavator shall receive a fair indemnity in lieu of a part of the find

22 English, Arabic and Hebrew shall be the official languages of Palestine. Any statement or inscription in Arabic on stamps or money in Palestine shall be repeated in Hebrew, and any statement or inscription in Hebrew shall be repeated in Arabic

23 The administration of Palestine shall recognise the holy days of the respective communities in Palestine as legal days of rest for the members of such communities

24 The mandatory shall make to the Council of the League of Nations an annual report to the satisfaction of the Council as to the measures taken during the year to carry out the provisions of the mandate. Copies of all laws and regulations promulgated or issued during the year shall be communicated with the report

25 In the territories lying between the Jordan and the eastern boundary of Palestine as ultimately determined, the mandatory shall be entitled, with the consent of the Council of the League of Nations to postpone or withhold application of such provisions of this mandate as he may consider inapplicable to the existing local conditions, and to make such provision<sup>(1)</sup> for the administration of the territories as he may consider suitable to those conditions, provided that no action shall be taken which is inconsistent with the provisions of articles 15, 16 and 18

26 The mandatory agrees that, if any dispute whatever should arise between the mandatory and another member of the League of Nations relating to the interpretation or the application of the provisions of the mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice provided for by article 14 of the Covenant of the League of Nations

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<sup>(1)</sup> See page 556

27. The consent of the Council of the League of Nations is required for any modification of the terms of this mandate.

28. In the event of the termination of the mandate hereby conferred upon the mandatory, the Council of the League of Nations shall make such arrangements as may be deemed necessary for safeguarding in perpetuity, under guarantee of the League, the rights secured by articles 13 and 14, and shall use its influence for securing, under the guarantee of the League, that the Government of Palestine will fully honour the financial obligations legitimately incurred by the administration of Palestine during the period of the mandate, including the rights of public servants to pensions or gratuities.

The present instrument shall be deposited in original in the archives of the League of Nations and certified copies shall be forwarded by the Secretary-General of the League of Nations to all members of the League.

Done at London the 24th day of July, 1922.

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## 2. Order in Council, 1922 (as amended 1923, 1933 and 1935).

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12. (1) All rights in or in relation to any public lands shall vest in and may be exercised by the High Commissioner for the time being in trust for the Government of Palestine.

(2) All mines and minerals of every kind and description whatsoever being in, under or on any land or water, whether the latter be inland rivers or seas or territorial waters, shall vest in the High Commissioner subject to any right subsisting at the date of this Order of any person to work such mines or minerals by virtue of a valid concession.

13. The High Commissioner may make grants or leases of any such public lands or mines or minerals or may permit such lands to be temporarily occupied on such terms or conditions as he may think fit subject to the provisions of any ordinance.

Provided that such grant or disposition shall be in conformity either with some Order in Council or law or ordinance now or hereafter in force in Palestine, or with such instructions as may be addressed to the High Commissioner under His Majesty's Sign Manual and Signet, or through a Secretary of State, for the purposes of executing the provisions of the mandate.<sup>(1)</sup>

\* \* \*

16a The High Commissioner may, if he thinks fit, by order under his hand to be published in the *Gazette*, convert such land in Palestine of the category termed "miri," as may be described in such order, into land of the category named "mulk."

16b The High Commissioner may, if he thinks fit, by order under his hand to be published in the *Gazette*, replace any tithes or taxes dedicated to a wakf of whatever category or other charitable or religious endowment by any other tax imposed in lieu thereof and may further with the sanction of the Secretary of State and subject to such instructions as may from time to time be given to him commute any such tithes, or tax, or substitute tax, by an annual payment or otherwise to the wakf or religious or charitable endowment

17 (1) (a) The High Commissioner shall have full power and authority, without prejudice to the powers inherent in, or reserved by this Order to His Majesty, and subject always to any conditions and limitations prescribed by any such instructions as may be given to him under the Sign Manual and Signet or through a Secretary of State to promulgate such ordinances as may be necessary for the peace order and good government of Palestine, provided that no ordinance shall be promulgated which shall restrict complete freedom of conscience and the free exercise of all forms of worship, save in so far as is required for the maintenance of public order and morals, or which shall tend to discriminate in any way between the inhabitants of Palestine on the ground of race, religion, or language

(b) No ordinance shall be promulgated by the High Commissioner until he has consulted the Advisory Council as constituted on the date of the commencement of this Order or such other advisory body as may after that date from time to time be constituted by him with the approval of a Secretary of State

(c) No ordinance shall be promulgated which shall be in any way repugnant to or inconsistent with the provisions of the mandate, and no ordinance which concerns matters dealt with specifically by the provisions of the mandate shall be promulgated until a draft thereof has been communicated to a Secretary of State and approved by him, with or without amendment

(d) No ordinance shall be promulgated unless a draft of the same shall first have been made public for one calendar month at the least before the enactment thereof, unless immediate promulgation shall, in the judgment of the High Commissioner, be indispensably necessary in the public interest

(e) His Majesty reserves to himself the right to disallow an ordinance promulgated by the High Commissioner within one year of the date of promulgation and to signify such disallowance through a Secretary of State. Every such disallowance shall take effect from the time when it shall be promulgated by the High Commissioner by notice in the *Gazette*.

(2) From and after a date to be fixed by the High Commissioner in Executive Council, by proclamation in the *Gazette*, there shall be constituted a Legislative Council in and for Palestine as in this Order provided and any advisory body then existing shall be dissolved. The powers of the High Commissioner as defined and limited by clause (1) of this article shall continue in force until a Legislative Council as provided above shall have been duly constituted, when articles 18 to 34 of this Order shall apply.

\* \* \*

31. Every member of the Legislative Council shall, before being permitted to sit or vote therein, take and subscribe the following oath before the president :—

“ I, A.B., do swear that I will be faithful and loyal to the Government of Palestine. So help me God.”

Provided that any person authorised to make a solemn affirmation or declaration instead of taking an oath may make such affirmation or declaration in lieu of such oath.

\* \* \*

38. Subject to the provisions of this part of the Order and any ordinance or rules, the civil courts hereinafter described, and any other courts or tribunals constituted by or under any of the provisions of any ordinance, shall exercise jurisdiction in all matters and over all persons in Palestine.

39. Magistrates' courts shall be established in each district and sub-district as may be prescribed from time to time by order under the hand of the High Commissioner. These courts shall have the jurisdiction assigned to them by the Ottoman Magistrates Law of 1913, as amended, altered or extended by any subsequent law or ordinance or rules for the time being in force.

40. District courts shall be established in such districts as may be prescribed from time to time by order under the hand of the High Commissioner, and every such court shall exercise jurisdiction :—

(1) As a court of first instance :—

(a) In all civil matters not within the jurisdiction of the magistrates' courts in and for that district.

(b) In all criminal matters which are not within the jurisdiction of the Court of Criminal Assize.

(2) As an appellate court from the said magistrates' courts subject to the provisions of any ordinances or rules.

41. There shall be a Court of Criminal Assize which shall have exclusive jurisdiction with regard to offences punishable with death and such jurisdiction with regard to other offences as may be prescribed by ordinance.



42 The High Commissioner may by order establish land courts as may be required from time to time for the hearing of such questions concerning the title to immovable property as may be prescribed

43 There shall be established a court to be called " the Supreme Court " of which the constitution shall be prescribed by ordinance. The Supreme Court sitting as a court of appeal shall have jurisdiction subject to the provisions of any ordinance to hear appeals from all judgments given by a district court in first instance or by the Court of Criminal Assize or by a land court

The Supreme Court sitting as a high court of justice shall have jurisdiction to hear and determine such matters as are not causes or trials, but petitions or applications not within the jurisdiction of any other court and necessary to be decided for the administration of justice

44 In civil matters when the amount or value in dispute exceeds £L 500 an appeal shall lie from the Supreme Court to His Majesty in Council. Every appeal shall be brought within such time and in such manner as may be prescribed by any rules of procedure made by His Majesty in Council

45 The High Commissioner may by order establish such separate courts for the district of Beersheba and for such other tribal areas as he may think fit. Such courts may apply tribal custom so far as it is not repugnant to natural justice or morality

46 The jurisdiction of the civil courts shall be exercised in conformity with the Ottoman law in force in Palestine on November 1st 1914 and such later Ottoman laws as have been or may be declared to be in force by public notice, and such Orders in Council ordinances and regulations as are in force in Palestine at the date of the commencement of this Order, or may hereafter be applied or enacted and subject thereto and so far as the same shall not extend or apply, shall be exercised in conformity with the substance of the common law, and the doctrines of equity in force in England, and with the powers vested in and according to the procedure and practice observed by or before courts of justice and justices of the peace in England, according to their respective jurisdictions and authorities at that date, save in so far as the said powers, procedure and practice may have been or may hereafter be modified, amended or replaced by any other provisions. Provided always that the said common law and doctrines of equity shall be in force in Palestine so far only as the circumstances of Palestine and its inhabitants and the limits of His Majesty's jurisdiction permit and subject to such qualification as local circumstances render necessary

47 The civil courts shall further have jurisdiction, subject to the provisions contained in this part of this Order, in matters of personal

status as defined in article 51 of persons in Palestine. Such jurisdiction shall be exercised in conformity with any law, ordinances or regulations that may hereafter be applied or enacted and subject thereto according to the personal law applicable.

Where in any civil or criminal cause brought before the civil court a question of personal status incidentally arises, the determination of which is necessary for the purposes of the cause, the civil court may determine the question, and may to that end take the opinion, by such means as may seem most convenient, of a competent jurist having knowledge of the personal law applicable.

48. When any person has been sentenced to death, the Chief Justice shall transmit to the High Commissioner a copy of the evidence. The sentence shall not be carried into effect until confirmed by the High Commissioner.

\* \* \*

51. Subject to the provisions of articles 64 to 67 inclusive jurisdiction in matters of personal status shall be exercised in accordance with the provisions of this part by the courts of the religious communities established and exercising jurisdiction at the date of this Order. For the purpose of these provisions matters of personal status mean suits regarding marriage or divorce, alimony, maintenance, guardianship, legitimation and adoption of minors, inhibition from dealing with property of persons who are legally incompetent, successions, wills and legacies, and the administration of the property of absent persons.

52. Moslem religious courts shall have exclusive jurisdiction in matters of personal status of Moslems in accordance with the provisions of the law of procedure of the Moslem religious courts of the 25th October, 1333, A.H., as amended by any ordinance or rules. They shall also have, subject to the provisions of any ordinance or of the order of the 20th December, 1921, establishing a Supreme Council for Moslem Religious Affairs, or of any orders amending the same, exclusive jurisdiction in cases of the constitution or internal administration of a wakf constituted for the benefit of Moslems before a Moslem religious court.

There shall be an appeal from the Court of the Qadi to the Moslem Religious Court of Appeal, whose decision shall be final.

53. The rabbinical courts of the Jewish community shall have :—

(i) Exclusive jurisdiction in matters of marriage and divorce, alimony and confirmation of wills of members of their community other than foreigners as defined in article 59.

(ii) Jurisdiction in any other matter of personal status of such persons, where all the parties to the action consent to their jurisdiction.

(iii) Exclusive jurisdiction over any case as to the constitution or internal administration of a wakf or religious endowment constituted before the rabbinical court according to Jewish law.

54 The courts of the several Christian communities shall have —

(i) Exclusive jurisdiction in matters of marriage and divorce alimony, and confirmation of wills of members of their community other than foreigners as defined in article 59

(ii) Jurisdiction in any other matters of personal status of such persons, where all the parties to the action consent to their jurisdiction

(iii) Exclusive jurisdiction over any case concerning the constitution or internal administration of a wakf or religious endowment constituted before the religious court according to the religious law of the community, if such exists

55 Where any action of personal status involves persons of different religious communities application may be made by any party to the Chief Justice who shall, with the assistance, if he thinks fit, of assessors from the communities concerned, *decide which court shall have jurisdiction*. Whenever a question arises as to whether or not a case is one of personal status within the exclusive jurisdiction of a religious court the matter shall be referred to a special tribunal of which the constitution shall be prescribed by ordinance

56 The judgments of the religious courts shall be executed by the process and offices of the civil courts

57 Subject to the provisions of any ordinance or order establishing a Supreme Council for Moslem Religious Affairs the constitution and jurisdiction of religious courts established at the date of this Order may be varied by ordinance or order of the High Commissioner

58 The civil courts shall exercise jurisdiction over foreigners subject to the following provisions —

59 For the purpose of this part of the Order, the expression 'foreigner' means any person who is not a Palestinian citizen

\* \* \*

64 (i) Matters of personal status affecting foreigners other than Moslems shall be decided by the district courts which shall apply the personal law of the parties concerned in accordance with such regulations as may be made by the High Commissioner, provided always that the courts shall have no jurisdiction to pronounce a decree of dissolution of marriage until an ordinance is passed conferring such jurisdiction

(ii) The personal law shall be the law of the nationality of the foreigner concerned unless that law imports the law of his domicile, in which case the latter shall be applied

(iii) The district court in trying matters of personal status affecting foreigners shall be constituted by the British president sitting alone. In trying matters of personal status affecting foreigners other than British subjects, the president may invite the Consul or a

representative of the Consulate of the foreigner concerned to sit as an assessor for the purpose of advising upon the personal law concerned. In case of an appeal from a judgment in such a case the Consul or representative of the Consulate of the foreigner concerned shall be entitled to sit as an assessor in the court of appeal.

65. Nothing in the preceding article shall be construed to prevent foreigners from consenting to such matters being tried by the courts of the religious communities having jurisdiction in like matters affecting Palestinian citizens.

The courts of the religious communities other than the Moslem religious courts shall not, however, have power to grant a decree of dissolution of marriage to a foreign subject.

For the purposes of this article, decree of dissolution of marriage includes a decree of divorce and a decree of nullity.

\* \* \*

67. Notwithstanding anything in this part of this Order a Consul in Palestine may execute such non-contentious measures in relation to the personal status of nationals of his State as the High Commissioner, with the approval of the Secretary of State, may from time to time prescribe by regulation.

\* \* \*

69. (i) Where it is shown by evidence on oath to the satisfaction of the High Commissioner that any person is conducting himself so as to be dangerous to peace and good order in Palestine, or is endeavouring to excite enmity between the people of Palestine and the mandatory, or is intriguing against the authority of the mandatory in Palestine, the High Commissioner may, if he thinks fit, by order under his hand and official seal, order that person to be deported from Palestine to such place as the High Commissioner may direct.

(ii) The place shall be a place in some part (if any) of His Majesty's dominions to which the person belongs, or the Government of which consents to the reception of persons deported under this Order, or to some place under the protection of His Majesty or in the country out of His Majesty's dominions to which that person belongs.

70. An appeal shall not lie against an order of deportation made under this Order.

\* \* \*

82. All ordinances, official notices and official forms of the Government, and all official notices of local authorities and municipalities in areas to be prescribed by order of the High Commissioner, shall be published in English, Arabic and Hebrew.

The three languages may be used in debates and discussions in the Legislative Council, and, subject to any regulations to be made from time to time, in the Government offices and the law courts

83 All persons in Palestine shall enjoy full liberty of conscience, and the free exercise of their forms of worship subject only to the maintenance of public order and morals. Each religious community recognised by the Government shall enjoy autonomy for the internal affairs of the community subject to the provisions of any ordinance or order issued by the High Commissioner.

84 (i) From and after the constitution of the Legislative Council hereinbefore provided for, the High Commissioner shall confer upon all matters relating to the regulation of immigration with a committee consisting of not less than one half of the unofficial members of the Legislative Council, and provision shall be made by Order in Council for investing the said committee with all such powers and authorities and otherwise for the constitution and conduct of the business of the said committee, as may be necessary to carry this article into effect

(ii) In the event of any difference of opinion between the High Commissioner and the said committee upon any such matter as aforesaid, the High Commissioner shall make a full report on the subject to a Secretary of State, whose decision thereon shall be final

85 If any religious community or considerable section of the population in Palestine complains that the terms of the mandate are not being fulfilled by the Government of Palestine, it shall be entitled to present a memorandum through a member of the advisory council or other advisory body constituted under article 17(1) (b) of this Order or of the Legislative Council, as the case may be, to the High Commissioner. Any memorandum so submitted shall be dealt with in such manner as may be prescribed by His Majesty in conformity with the procedure recommended by the Council of the League of Nations

86 This Order in Council shall not apply to such parts of the territory comprised in Palestine to the east of the Jordan and the Dead Sea as shall be defined by order of the High Commissioner. Subject to the provisions of article 25 of the mandate, the High Commissioner may make such provision<sup>(1)</sup> for the administration of any territories so defined as aforesaid as with the approval of the Secretary of State may be prescribed

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4 Appeal to Privy Council Order in Council, 1924.

\* \* \*

(1) See page 556

3. Subject to the provisions of this Order, an appeal shall lie—

(a) as of right, from any final judgment of the court, where the matter in dispute on the appeal amounts to or is of the value of £500 sterling or upwards, or where the appeal involves directly or indirectly some claim or question to or respecting property or some civil right amounting to or of the said value or upwards; and

(b) at the discretion of the court, from any other judgment of the court, whether final or interlocutory, if, in the opinion of the court, the question involved in the appeal is one which, by reason of its great general or public importance or otherwise, ought to be submitted to His Majesty in Council for decision.

\* \* \*

6. Leave to appeal under article 3 shall only be granted by the court in the first instance—

(a) upon condition of the appellant, within a period to be fixed by the court, but not exceeding 3 months from the date of the hearing of the application for leave to appeal, entering into good and sufficient security, to the satisfaction of the court, in a sum not exceeding £300 for the due prosecution of the appeal, and the payment of all such costs as may become payable to the respondent in the event of the appellant not obtaining an order granting him final leave to appeal, or of the appeal being dismissed for non-prosecution, or of His Majesty in Council ordering the appellant to pay the respondent's costs of the appeal (as the case may be); and

(b) upon such other conditions (if any) as to the time or times within which the appellant shall take the necessary steps for the purpose of procuring the preparation of the record and the despatch thereof to England as the court, having regard to all the circumstances of the case, may think it reasonable to impose.

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## 5. Royal Instructions, 1932.

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1. The High Commissioner may, whenever he thinks fit, require any person in the public service of Palestine to take the oath in the form prescribed by article 31 of "The Palestine Order in Council, 1922,"<sup>(1)</sup> or by any Order amending or substituted for the same, together with such other oath or oaths as may from time to time

<sup>(1)</sup> Page 545.

be prescribed by any laws in force in Palestine. The High Commissioner is to administer such oaths, or to cause them to be administered by some public officer of Palestine.

\* \* \*

4 The Executive Council of Palestine shall consist of the persons for the time being lawfully discharging the functions of Chief Secretary, Attorney General, and Treasurer, who shall be styled "*ex officio* members" of the Executive Council, and such other persons holding office in the public service of Palestine as the High Commissioner, in pursuance of instructions from us through one of our Principal Secretaries of State may from time to time appoint by an instrument under the Public Seal of Palestine, who shall be styled "official members" of the Executive Council. If any official member of the Council shall cease to hold office in the public service of Palestine his seat in the Council shall thereupon become vacant.

Whenever upon any special occasion the High Commissioner desires to obtain the advice of any persons within Palestine, relating to affairs therein, he may, by an instrument under the Public Seal of Palestine summon for such special occasion any such persons as extraordinary members of the Executive Council.

\* \* \*

17 The High Commissioner shall not, unless he shall have previously obtained instructions thereupon from one of our Principal Secretaries of State promulgate any ordinance of any of the following classes namely —

- (1) Any ordinance relating to immigration,
- (2) Any ordinance for the divorce of persons joined together in holy matrimony,
- (3) Any ordinance whereby any grant of land or money, or other donation or gratuity, may be made to himself,
- (4) Any ordinance affecting the currency of Palestine or relating to the issue of bank notes,
- (5) Any ordinance imposing differential duties,
- (6) Any ordinance the provisions of which shall appear inconsistent with obligations imposed upon us by treaty or by the mandate conferred on us for the government of Palestine,
- (7) Any ordinance interfering with the discipline or control of our forces by land, sea or air,
- (8) Any ordinance of an extraordinary nature and importance, whereby our prerogative, or the rights and property of our subjects

not residing in Palestine, or the trade and shipping of any part of our dominions, may be prejudiced ;

(9) Any ordinance whereby persons who are nationals of any States members of the League of Nations may be subjected or made liable to any disabilities to which persons who are British subjects or nationals of any foreign State are not also subjected or made liable ;

(10) Any ordinance containing provisions which are repugnant to any Order in Council in force in Palestine or which have been disallowed by us through one of our Principal Secretaries of State.

18. If and when a Legislative Council in and for Palestine shall have been duly constituted in accordance with the provisions of clause (2) of article 17 of " The Palestine Order in Council, 1922," as amended by " The Palestine (Amendment) Order in Council, 1923,"<sup>(1)</sup> or of any Order adding to amending or substituted for the same, the instructions given in the preceding clauses 16 and 17 of these our Instructions shall cease to have any force or effect and in lieu thereof the instructions given in the following clauses 19 to 22 shall come into force and have effect.

19. No proposed ordinance which shall be in any way repugnant to, or inconsistent with, the provisions of the mandate<sup>(2)</sup> shall be submitted to the Legislative Council.

\* \* \*

21. The High Commissioner shall not, unless he shall have previously obtained instructions thereupon from one of our Principal Secretaries of State, or unless the ordinance shall contain a clause suspending its operations until the signification of Our pleasure thereupon, assent to any ordinance of any of the following classes, namely :—

[Continues as in clause 17 : see page 554.]

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(1) Page 545.

(2) Page 539.



## TRANSJORDAN MANDATED TERRITORY

- 1 Note by the Secretary General of the League of Nations relating to the Application of the Palestine Mandate to the Territory — Geneva, September 23, 1922

*Text in State Papers, Vol C\XVI page 849*

- 2 Agreement between His Britannic Majesty and the Amir regarding the Administration — Jerusalem, February 20, 1928 <sup>(1)</sup>

*Text in State Papers Vol C\XVIII page 273*

### *Amendment*

#### AGREEMENT

Jerusalem June 2 1934<sup>(2)</sup>

*Text in Parliamentary Paper*

*Cmd 4999 (Treaty Series No 34 (1935))*

- 3 Organic Law — April 16, 1928

*Text in State Papers Vol C\XVIII page 208*

- 1 Note by the Secretary-General of the League of Nations, 1922

The Secretary General has the honour to communicate for the information of the members of the League a memorandum relating to article 25 of the Palestine mandate<sup>(3)</sup> presented by the British Government to the Council of the League on September 16th 1922

The memorandum was approved by the Council subject to the decision taken at its meeting in London on July 24th, 1922 with regard to the coming into force of the Palestine and Syrian<sup>(4)</sup> mandates

### *Memorandum by the British Representative*

- 1 Article 25 of the mandate for Palestine provides as follows —  
[Quotation]

- 2 In pursuance of the provisions of this article, His Majesty's Government invite the Council to pass the following resolution —

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<sup>(1)</sup> Ratifications exchanged at Amman October 31 1929

<sup>(2)</sup> Ratifications exchanged at Abeen June 22 1935

<sup>(3)</sup> Page 539

<sup>(4)</sup> *State Papers* Vol C\VI page 836

"The following provisions of the mandate for Palestine are not applicable to the territory known as 'Transjordan,' which comprises all territory lying to the east of a line drawn from a point 2 miles west of the town of Akaba on the gulf of that name up the centre of the Wady Araba, Dead Sea and river Jordan to its junction with the river Yarmuk; thence up the centre of that river to the Syrian frontier:—

*Preamble.*—Recitals 2 and 3.

*Article 2.*—The words 'placing the country under such political administration and economic conditions as will secure the establishment of the Jewish national home, as laid down in the preamble, and.'

*Article 4.*

*Article 6.*

*Article 7.*—The sentence 'There shall be included in this law provisions framed so as to facilitate the acquisition of Palestinian citizenship by Jews who take up their permanent residence in Palestine.'

*Article 11.*—The second sentence of the first paragraph and the second paragraph.

*Article 13.*

*Article 14.*

*Article 22.*

*Article 23.*

In the application of the mandate to Transjordan, the action which, in Palestine, is taken by the administration of the latter country, will be taken by the administration of Transjordan under the general supervision of the mandatory."

3. His Majesty's Government accept full responsibility as mandatory for Transjordan, and undertake that such provision as may be made for the administration of that territory in accordance with article 25 of the mandate shall be in no way inconsistent with those provisions of the mandate which are not by this resolution declared inapplicable.

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## 2. Agreement, 1928 (as amended 1934).

*Whereas His Britannic Majesty in virtue of a mandate entrusted to him on the 24th of July, 1922,<sup>(1)</sup> has authority in the area covered thereby; and*

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(<sup>1</sup>) Page 539.

*Whereas His Highness the Amir of Transjordan has set up an administration in that part of the area under mandate known as "Transjordan", and*

*Whereas His Britannic Majesty is prepared to recognise the existence of an independent Government in Transjordan under the rule of His Highness the Amir of Transjordan, provided that such Government is constitutional and places His Britannic Majesty in a position to fulfil his international obligations in respect of that territory by means of an agreement to be concluded with His Highness*

*Now therefore His Britannic Majesty and His Highness the Amir of Transjordan have resolved to conclude an agreement for those purposes, and to that end have appointed as their plenipotentiaries*

[Here follow the names]

*Who, having communicated their full powers, found in good and due form, have agreed as follows —*

Art 1 His Highness the Amir agrees that His Britannic Majesty shall be represented in Transjordan by a British Resident acting on behalf of the High Commissioner for Transjordan, and that communications between His Britannic Majesty and all other Powers on the one hand and the Transjordan Government on the other shall be made through the British Resident and the High Commissioner aforesaid

His Britannic Majesty agrees that His Highness the Amir may appoint consular representatives in such neighbouring Arab States as may be considered necessary

His Highness the Amir agrees that the ordinary expenses of civil government and administration will be borne entirely by Transjordan

2 The powers of legislation and of administration entrusted to His Britannic Majesty as mandatory for Palestine shall be exercised in that part of the area under mandate known as "Transjordan" by His Highness the Amir through such constitutional government as is defined and determined in the organic law<sup>(1)</sup> of Transjordan and any amendment thereof made with the approval of His Britannic Majesty.

Throughout the remaining clauses of this agreement the word "Palestine," unless otherwise defined, shall mean that portion of the area under mandate which lies to the west of a line drawn from a point 2 miles west of the town of Akaba on the gulf of that name up the centre of the Wady Araba, Dead Sea and river Jordan to its junction with the river Yarmuk, thence up the centre of that river to the Syrian frontier

3 His Highness the Amir agrees that for the period of the present agreement no official of other than Transjordan nationality shall be appointed in Transjordan without the concurrence of His

Britannic Majesty. The numbers and conditions of employment of British officials so appointed in the Transjordan Government shall be regulated by a separate agreement.

4. His Highness the Amir agrees that all such laws, orders or regulations as may be required for the full discharge of the international responsibilities and obligations of His Britannic Majesty in respect of the territory of Transjordan shall be adopted and made, and that no laws, orders or regulations shall be adopted or made in Transjordan which may hinder the full discharge of such international responsibilities and obligations.

5. His Highness the Amir agrees to be guided by the advice of His Britannic Majesty tendered through the High Commissioner for Transjordan in all matters concerning foreign relations of Transjordan, as well as in all important matters affecting the international and financial obligations and interests of His Britannic Majesty in respect of Transjordan. His Highness the Amir undertakes to follow an administrative, financial and fiscal policy in Transjordan such as will ensure the stability and good organisation of his Government and its finances. He agrees to keep His Britannic Majesty informed of the measures proposed and adopted to give due effect to this undertaking, and further agrees not to alter the system of control of the public finances of Transjordan without the consent of His Britannic Majesty.

6. His Highness the Amir agrees that he will refer for the advice of His Britannic Majesty the annual budget law and any law which concerns matters covered by the provisions of this agreement, and any law of any of the following classes, namely :—

(1) Any law affecting the currency of Transjordan or relating to the issue of bank notes.

(2) Any law imposing differential duties.

(3) Any law whereby persons who are nationals of any States members of the League of Nations or of any State to which His Britannic Majesty has agreed by treaty that the same rights should be ensured as it would enjoy if it were a member of the said League, may be subjected or made liable to any disabilities to which persons who are British subjects or nationals of any foreign State are not also subjected or made liable.

(4) Any special law providing for succession to the Amir's throne, or for the establishment of a Council of Regency.

(5) Any law whereby the grant of land or money or other donation or gratuity may be made to himself.

(6) Any law under which the Amir may assume sovereignty over territory outside Transjordan.

(7) Any law concerning the jurisdiction of the civil courts over foreigners.

(8) Any law altering, amending or adding to the details of the provisions of the organic law

7 Except by agreement between the two countries there shall be no customs barrier between Palestine and Transjordan

The Government of Palestine shall pay to the Transjordan Government the estimated amount of customs duties levied on the part of the goods entering Palestine from territory other than Transjordan which subsequently enters Transjordan for local consumption, but shall be entitled to withhold from the sums to be paid on this account the estimated amount of customs duties levied by Transjordan on that part of the goods entering Transjordan from other than Palestine territory, which subsequently enters Palestine for local consumption. The trade and commerce of Transjordan shall receive at Palestinian ports equal facilities with the trade and commerce of Palestine

8 So far as is consistent with the international obligations of His Britannic Majesty no obstacle shall be placed in the way of the *association of Transjordan for customs or other purposes* with such neighbouring Arab States as may desire it

9 His Highness the Amir undertakes that he will accept and give effect to such reasonable provisions as His Britannic Majesty may consider *necessary in judicial matters to safeguard the interests of foreigners*

These provisions shall be embodied in a separate agreement which shall be communicated to the Council of the League of Nations, and, pending the conclusion of such agreement, no foreigner shall be brought before a Transjordan court without the concurrence of His Britannic Majesty

His Highness the Amir undertakes that he will accept and give effect to such reasonable provisions as His Britannic Majesty may consider necessary in judicial matters to safeguard the law and jurisdiction with regard to questions arising out of the religious beliefs of the different religious communities

10 His Britannic Majesty may maintain armed forces in Transjordan, and may raise, organise and control in Transjordan such armed forces as may in his opinion be necessary for the defence of the country and to assist His Highness the Amir in the preservation of peace and order

His Highness the Amir agrees that he will not raise or maintain in Transjordan or allow to be raised or maintained any military forces without the consent of His Britannic Majesty

11 His Highness the Amir recognises the principle that the cost of the forces required for the defence of Transjordan is a charge on the revenues of that territory. At the coming into force of this agreement, Transjordan will continue to bear one sixth of the cost

of the Transjordan Frontier Force, and will also bear, as soon as the financial resources of the country permit, the excess of the cost of the British forces stationed in Transjordan, so far as such forces may be deemed by His Britannic Majesty to be employed in respect of Transjordan, over the cost of such forces if stationed in Great Britain, and the whole cost of any forces raised for Transjordan alone.

12. So long as the revenues of Transjordan are insufficient to meet such ordinary expenses of administration (including any expenditure on local forces for which Transjordan is liable under article 11) as may be incurred with the approval of His Britannic Majesty, arrangements will be made for a contribution from the British Treasury by way of grant or loan in aid of the revenues of Transjordan. His Britannic Majesty will also arrange for the payment of the excess of the cost of the British forces stationed in Transjordan, and deemed by His Britannic Majesty to be employed in respect of Transjordan, in so far and for such time as the revenues of Transjordan are insufficient to bear such excess.

13. His Highness the Amir agrees that all such laws, orders or regulations as may from time to time be required by His Britannic Majesty for the purposes of article 10 shall be adopted and made, and that no laws, orders or regulations shall be adopted or made in Transjordan which may, in the opinion of His Britannic Majesty, interfere with the purposes of that article.

14. His Highness the Amir agrees to follow the advice of His Britannic Majesty with regard to the proclamation of martial law in all or any part of Transjordan and to entrust the administration of such part or parts of Transjordan as may be placed under martial law to such officer or officers of His Britannic Majesty's forces as His Britannic Majesty may nominate. His Highness the Amir further agrees that on the re-establishment of civil government a special law shall be adopted to indemnify the armed forces maintained by His Britannic Majesty for all acts done or omissions or defaults made under martial law.

15. His Britannic Majesty may exercise jurisdiction over all members of the armed forces maintained or controlled by His Britannic Majesty in Transjordan.

For the purposes of this and the five preceding articles, the term "armed forces" shall be deemed to include civilians attached to or employed with the armed forces.

16. His Highness the Amir undertakes that every facility shall be provided at all times for the movement of His Britannic Majesty's forces (including the use of wireless and land-line telegraphic and telephonic services and the right to lay land-lines), and for the carriage and storage of fuel, ordnance, ammunition and supplies on the roads, railways and waterways and in the ports of Transjordan.

17. His Highness the Amir agrees to be guided by the advice of His Britannic Majesty in all matters concerning the granting of concessions, the exploitation of natural resources, the construction and operation of railways, and the raising of loans.

18. No territory in Transjordan shall be ceded or leased or in any way placed under the control of any foreign Power ; this shall not prevent His Highness the Amir from making such arrangements as may be necessary for the accommodation of foreign representatives and for the fulfilment of the provisions of the preceding articles.

19. His Highness the Amir agrees that, pending the making of special extradition agreements relating to Transjordan, the extradition treaties in force between His Britannic Majesty and foreign Powers shall apply to Transjordan.

20. This agreement shall come into force so soon as it shall have been ratified by the high contracting parties after its acceptance by the constitutional Government to be set up under article 2. The constitutional Government shall be deemed to be provisional until the agreement shall have been so approved. Nothing shall prevent the high contracting parties from reviewing from time to time the provisions of this agreement with a view to any revision which may seem desirable in the circumstances then existing.

21. The present agreement has been drawn up in two languages, English and Arabic, and the plenipotentiaries of each of the high contracting parties shall sign two English copies and two Arabic copies. Both texts shall have the same validity, but in case of divergence between the two in the interpretation of one or other of the articles of the present agreement, the English text shall prevail.

In faith whereof the above-mentioned plenipotentiaries have signed the present agreement

*Done at Jerusalem, this 20th day of February, 1928.*

(Signature in Arabic.)

HASSAN KHALID ABOULHOUDY.

PLUMER, F.M.

### 3. Organic Law, 1928.

(Translation.)

\* \* \*

#### *Part I.—Rights of the People*

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5. There shall be no difference in rights before the law among Transjordanians although they may differ in race, religion and language.

\* \* \*

10. Islam shall be the religion of the State and there shall be insured to all dwellers in Transjordan complete freedom of belief and freedom to practise forms of worship in accordance with their customs unless detrimental to public safety or order or contrary to morals.

\* \* \*

14. The various communities shall have the right to establish and maintain their schools for the teaching of their own members in their own language provided that they conform to the general requirements prescribed by law.

15. The official language shall be Arabic.

### *Part II.—The Amirate and the Rights of the Amirate*

16. Subject to the provisions herein powers of legislation and administration are vested in Amir Abdullah Ibn Hussein and his heirs after him.

The Heir Apparent shall be a male descendant of the Amir in accordance with a special law of succession to which the provisions of articles 70 and 71 of this organic law regarding variation, annulment and amendment shall apply.

The Amir shall attain his majority upon the completion of his 18th year.

Should the Heir Apparent succeed to the Amirate not having attained his majority, power of legislation and administration shall be vested in a Council of Regency, the form of which shall be determined by special law.

\* \* \*

19. (1) The Amir is the head of the State. He sanctions and promulgates all laws and supervises their execution. He is not entitled to modify or suspend laws or to give dispensation in their execution, except in the circumstances and in the manner prescribed by law.

(2) The Amir concludes treaties, but His Britannic Majesty shall have power to accede, when necessary, on behalf of Transjordan to any commercial or extradition treaty or general international convention to which His Majesty is a party for Great Britain and Northern Ireland.



(3) The Amir issues orders for the holding of elections to the Legislative Council, convokes the Council, opens it, adjourns it, prorogues it and dissolves it in accordance with the provisions of the law

20 The Amir appoints the Chief Minister and dismisses him or accepts his resignation from office. Subject to the provisions of this law and any law enacted thereunder, he appoints and dismisses all public officers

21 There shall be for the purpose of advising the Amir an Executive Council consisting of the Chief Minister and other members not exceeding five in number, who shall be appointed by the Amir on the recommendation of the Chief Minister either from among the principal officers of the administration or the elected representatives of the people

The Executive Council is entrusted with the conduct of the affairs of Transjordan

It shall meet under the presidency of the Chief Minister to decide as to the measures which should be taken in matters appertaining to more than one department and to investigate all important matters concerning a single department. The Chief Minister will communicate to the Amir the decisions of the Council and will ascertain his wishes in regard thereto

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### *Part III — The Legislature*

25 The legislative power is vested in the Legislative Council with the Amir. The Legislative Council consists of —

(a) Representatives elected in accordance with the electoral law, which shall have regard to the proper representation of minorities

(b) The Chief Minister and other members of the Executive Council not being elected representatives

The duration of the Legislative Council shall be for 3 years

26 The Legislative Council shall be opened by the Amir in person or by the Chief Minister authorised to make the Amir's speech

27 No person shall be an elected member of the Legislative Council —

(1) Who is not a Transjordanian

(2) Who claims foreign nationality or foreign protection

(3) Who has not completed his 30th year

(4) Who has lost his civil rights

(5) Who has been adjudged bankrupt and has not been discharged

(6) Who has been placed under interdiction by a competent court and has not been released.

(7) Who has been sentenced to imprisonment for more than one year for an offence other than a political offence and has not received a free pardon for the crime for which he has been sentenced.

(8) Who has a material interest, personally or otherwise, in any contract other than a contract of lease of land with a public department of Transjordan unless his interest arises through his being a shareholder in any association composed of more than 10 persons.

(9) Who is mad or an idiot.

(10) Who is related to the Amir within such degrees of consanguinity as shall be prescribed by special law.

28. Subject to the provision for dissolution in article 19 (3) the duration of the Legislative Council shall be for three ordinary sessions, one session each year, beginning from the 1st of November following the election; and if the 1st of November is an official holiday, then from the day following.

29. The Amir shall summon the Legislative Council to assemble in the capital for the ordinary session on the 1st of November of each year, subject to the provisions of article 28, and if not so summoned it shall assemble of its own accord in due course of law on the said date, when its ordinary session shall begin, and this shall extend for 3 months unless the Legislative Council be dissolved by the Amir before the expiration of that period or unless the session be prolonged by the Amir for the purpose of the despatch of business of urgent nature.

If the session be prolonged then the total period of the session shall not exceed 6 months.

The Legislative Council may adjourn from time to time in conformity with its standing orders.

The Legislative Council shall further adjourn if so required to do by the Amir not more than three times during any one session for stated periods, which shall not altogether exceed a total period of one month and a half. In computing the period of the session the period covered by such further adjournments shall not be taken into account.

Notwithstanding the provisions herein, the Legislative Council may assemble in extraordinary session at any time between the date of the coming into force of this organic law and the date of the first ordinary session held under this law.

30. If the Legislative Council be dissolved, a general election shall take place and the new Legislative Council shall assemble in extraordinary session not more than 4 months after the date of

dissolution In any event this session shall be prorogued on the 31st of October so that the first ordinary session of the Legislative Council may assemble at the beginning of November

\* \* \*

32 The Chief Minister, when present, shall preside at all meetings of the Legislative Council, and in his absence such *ex officio* member as he shall from time to time appoint for that purpose, and in default of such appointment the senior *ex officio* member of the Legislative Council present shall preside

\* \* \*

35 Unless otherwise provided by this law, a decision shall be given by the majority of votes of the members present, other than the president The president shall not vote except in case of an equality of votes when he shall have and exercise a casting vote

36 The Legislative Council shall have power and authority, subject always to the treaty obligations of His Highness the Amir, to pass such laws as may be necessary for the peace, order and good government of Transjordan

37 Every proposal for a law shall be laid before the Council by the Chief Minister or by the head of a department The annual budget shall likewise be laid in the form of a law before the Council

38 No law shall take effect until the Amir shall have assented thereto and signed the same in token of such assent and until it has been promulgated in the *Official Gazette*

The Amir shall within the space of one calendar year from the date on which it is submitted to him either assent to the bill or return it with a statement of reasons for dissent

39 No law shall be promulgated unless a draft shall first have been made public for one calendar month at least before the enactment thereof unless immediate promulgation shall, in the judgment of the Amir in Council in agreement with the accredited representative of His Britannic Majesty, be indispensably necessary in the public interest

40 Any member of the Council may raise in the Council a question on any matter concerning the public administration

41 If necessity should arise, when the Legislative Council is not sitting, for urgent measures to be taken for the maintenance of public order and security, or for repelling a public danger, or for urgent expenditure not sanctioned by the budget or by special law, or for the purpose of securing the fulfilment of his treaty obligations the Amir in Council may pass ordinances directing the necessary measures to be taken

Such ordinances, which shall not contravene the provisions of this organic law, shall have the force of law. With the exception of those passed for the purpose of securing the fulfilment of the treaty obligations of His Highness the Amir, they shall be submitted to the Legislative Council at the beginning of its session.

If the Legislative Council shall not in two successive ordinary sessions accept any such ordinances so submitted the Government shall notify the cessation thereof and from the date of such notification the ordinance shall cease to be in force.

Throughout this organic law the expression "law" or "laws" shall include an ordinance or ordinances passed by virtue of the provisions of this article unless there is anything in the text of this organic law repugnant thereto.

#### *Part IV.—The Judicature*

42. Civil and Shari judges shall be appointed by iradé and shall be irremovable except as provided by the provisions of a special law dealing with their qualifications, appointment, grades and the manner of their conduct.

43. The courts shall be divided into three classes :—

- (1) Civil courts.
- (2) Religious courts.
- (3) Special courts.

44. Subject to the provisions of this organic law, the constitution, place of sitting, grades and divisions of all courts and their jurisdiction and administration shall be determined by special laws.

45. All courts shall be free from interference.

46. All trials shall be public except where, for reasons to be prescribed by law, courts may sit *in camera*.

It shall be lawful to publish the proceedings and judgments of courts, except proceedings *in camera*.

All judgments shall be issued in the name of the Amir.

47. The civil courts shall have jurisdiction over all persons in Transjordan in all matters civil and criminal, including cases of claims by and against the Transjordan Government, except in such matters which by the provisions of this organic law or of any law for the time being in force shall be assigned to the jurisdiction of the religious courts or special courts.

48. (1) The civil and criminal jurisdiction of the civil courts shall be exercised in accordance with the law for the time being in force.

Provided that, in matters regarding the personal status of foreigners or in other matters of a civil and commercial nature in

which it is customary by international usage to apply the law of another country, such law shall be applied in a manner to be prescribed by law.

(2) Effect shall be given by law to any agreement concluded by the Amir under the provisions of this organic law in regard to any judicial proceedings by or against foreigners.

49. The religious courts shall be divided into :—

(a) Moslem courts.

(b) Religious community councils.

50. The Moslem courts shall have exclusive jurisdiction in matters of the personal status of Moslems in accordance with the provisions of the law of procedure of the Moslem religious courts of the 25th of October, 1333 A.H., as amended by any law, ordinance or rules ; and matters connected with the constitution or internal administration of a wakf constituted for the benefit of Moslems before a Moslem religious court.

Where a matter of personal status concerns both Moslems and non-Moslems, or where one of the parties in an action concerning a Moslem wakf is a non-Moslem, the civil courts shall have jurisdiction unless all parties consent to the jurisdiction of the Moslem courts.

The Moslem courts shall also have jurisdiction in applications for *diyyet* where all the parties are Moslems or where all the parties consent to the jurisdiction of the said courts.

For the purpose of this organic law, matters of personal status mean suits regarding marriage or divorce, alimony, maintenance, guardianship, legitimation and adoption of minors, inhibition from dealing with property of persons who are legally incompetent, succession, wills and legacies and the administration of the property of absent persons

51. The jurisdiction of the Moslem courts shall be exercised in conformity with the principles of Shari law.

52. The religious community councils shall comprise such councils of religious communities, not Moslem, as shall be established and invested with judicial power under the authority of special laws.

53. The religious community councils shall have :—

(i) Exclusive jurisdiction in matters of marriage, dowry, divorce, alimony, maintenance between husband and wife, and the attestation of wills so far as concerns the members of their communities other than foreigners, except in regard to those matters which come within the jurisdiction of the civil courts.

(ii) Jurisdiction in any other matters of personal status concerning members of the communities if all parties concerned agree.

(iii) Exclusive jurisdiction in matters connected with the constitution and administration of wakfs for the benefit of their communities.

54. The procedure to be followed and the fees to be levied by the religious community councils shall be determined by special law. A special law shall also regulate inheritance, testamentary procedure and such matters of personal status as lie outside the exclusive jurisdiction of the said councils.

55. Special courts shall exercise jurisdiction only in accordance with law.

*Part V.—Administration*

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*Part VI.—Validation of Laws and Judgments*

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*Part VII.—General*

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67. (1) All rights in or in relation to any public lands shall vest in and may be exercised by the Amir in trust for the Transjordan Government.

(2) All mines and minerals of every kind and description whatsoever being in, under or on any land or water whether territorial waters, river or inland sea shall vest in the Amir subject to any right subsisting at the date of this organic law of any person to work such mines or minerals by virtue of a valid concession.

68. The Amir in Council may make grants or leases of any such public lands or mines or minerals or may permit such lands to be temporarily occupied on such terms or conditions as he may think fit subject to the provisions of this organic law.

Provided that no such grant, leave or disposition shall be made otherwise than in conformity with law.

69. In the event of disturbances occurring or should there be indications of anything of that nature in any part of Transjordan, or in the event of danger of hostile attack on any part of Transjordan, the Amir in Council shall have power to proclaim martial law as a temporary measure in all such parts of Transjordan as may be affected by such disturbances or attack.

The ordinary law of the State may be temporarily suspended in such district or districts as may be named and to such an extent as may be specified in any such proclamation, provided that all persons shall be and remain legally liable in respect of all acts done by them in pursuance of such proclamation unless and until they shall have been indemnified by special law passed for that purpose.

The method of administration of districts proclaimed to be under martial law shall be proclaimed by iradé.

70 The Amir may by proclamation at any time within 2 years from the date of the commencement of this organic law and subject to his treaty obligations vary annul or add to any of the provision of this organic law in order to carry out the purposes of the same and may provide for any other matters necessary in order to carry into effect the provisions thereof

71 After such period of 2 years and subject always to the treaty obligations of His Highness the Amir no change may be made in this organic law except by a law passed by a majority of not less than two thirds of the members of the Legislative Council

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## ST. HELENA

- 1 Order in Council making Provision for the Government and declaring the Powers of the Governor—Osborne July 27 1863

Text in *Statutory Rules and Orders* revised to December 31 1903  
Vol VI St Helena page 12

*Amendment*

ORDER IN COUNCIL

London May 7 1929  
page 43

Text in *State Papers* Vol CXXX

- 2 Letters Patent constituting the Office of Governor and Commander in Chief—Westminster June 11 1890

Text in *Statutory Rules and Orders* revised to December 31 1903  
Vol XI St Helena page 16

*Amendment*

LETTERS PATENT

Westminster December 6 1906  
and *Orders* 1906 page 833

Text in *Statutory Rules*

- 3 Royal Instructions to the Governor and Commander in Chief—June 11, 1890

*Amendment*

ADDITIONAL INSTRUCTIONS

June 5 1929

4. Letters Patent appointing the Governor to be Governor of Ascension, and providing for the Government thereof as a Dependency.—Westminster, September 12, 1922.

Text in *Statutory Rules and Orders*, 1922, page 1144.

5. Letters Patent appointing the Governor to be Governor of Tristan da Cunha, Gough, Nightingale and Inaccessible Islands and providing for the Government thereof as Dependencies.—Westminster, January 12, 1938.

Text in *St. Helena Government Gazette*, February 28, 1938.

.. .. .

3. Royal Instructions, 1890 (as amended 1929).

\* \* \*

1. The Executive Council of our Island of St. Helena shall be composed of the following members, that is to say, the senior military officer for the time being in command of our regular troops within the Island, the person for the time being holding the substantive appointment of Government Secretary of the Island, who shall be styled "*ex officio* members" of the Executive Council, and further of such other persons as immediately before the receipt in the Island of these our Additional Instructions are members of the said Council, or as we may, from time to time, appoint by any instruction or warrant under our Sign Manual and Signet, or as the Governor, in pursuance of instructions from us through one of our Principal Secretaries of State, may from time to time appoint by an instrument under the Public Seal of the Island.

Whenever upon any special occasion the Governor desires to obtain the advice of any person within our Island of St. Helena or the Dependency touching our affairs therein he may, by an instrument under the Public Seal of our said Island, summon for such special occasion any such person as an extraordinary member of the Executive Council of our said Island.

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4. Letters Patent (Ascension), 1922.

\* \* \*

5. There shall be an Executive Council for the Dependency, and the said Council shall consist of such persons as shall from time to time constitute the Executive Council of the Island; and the said Council shall exercise the same functions in regard to all matters



arising in connexion with the Dependency as are exercised by the Executive Council of the Island in regard to matters arising in connexion with the said Island

\* \* \*

## SEYCHELLES

- 1 Letters Patent constituting the Office of Governor and Commander-in-Chief—Westminster, August 31, 1903

Text in *Statutory Rules and Orders* revised to December 31, 1903  
Vol XI Seychelles page 1

- 2 Royal Instructions to the Governor and Commander-in-Chief—August 31, 1903

### *Amendments*

ADDITIONAL INSTRUCTIONS

April 3 1911

St James s August 31 1931

- 2 Royal Instructions, 1903 (as amended 1911 and 1931)

\* \* \*

- 2 (1) The Executive Council shall consist of the persons for the time being lawfully discharging the functions of the respective offices of Crown Prosecutor, and Treasurer and Collector of Customs of the Colony, who shall be styled *ex officio* members,' and further of such other person holding office in the public service of the Colony, who shall be styled 'the official member,' as the Governor in pursuance of instructions from us through one of our Principal Secretaries of State, may from time to time appoint under the Public Seal of the Colony, and of such other person not holding office in the public service of the Colony who shall be styled "the unofficial member, as the Governor, in pursuance of instructions from us through one of our Principal Secretaries of State, may from time to time appoint, under the said Public Seal

\* \* \*

10. (i) The Legislative Council shall consist of the Governor, and of the following officers or *ex officio* members, that is to say, the persons for the time being lawfully discharging the functions of the respective offices of Crown Prosecutor, and Treasurer and Collector of Customs, and such other person as the Governor, in pursuance of instructions from us through one of our Principal Secretaries of State, may from time to time appoint under the Public Seal of the Colony, and all such persons shall be called "official members" of the said Council; and further of such other persons not holding office in the Colony as may from time to time be appointed by warrant under the Royal Sign Manual and Signet, or through one of our Principal Secretaries of State, or as the Governor may, in the manner hereinafter mentioned, provisionally appoint to be members thereof, and such persons shall be called "unofficial members" of the said Council.

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## SIERRA LEONE COLONY AND PROTECTORATE

1. Order in Council providing for the Establishment of a Legislative Council for the Colony and Protectorate.—London, January 16, 1924.

Text in *State Papers*, Vol. CXIX, page 4.

### *Amendment*

ORDER IN COUNCIL :

London, June 29, 1931 . . . . . Text in *State Papers*, Vol. CXXXIV, page 87.

2. Letters Patent constituting the Office of Governor and Commander-in-Chief of the Colony and providing for the Government thereof.—Westminster, January 28, 1924.

Text in *Statutory Rules and Orders*, 1924, page 1883.

3. Royal Instructions to the Governor and Commander-in-Chief of the Colony.—St. James's, January 28, 1924.

### *Amendment*

ADDITIONAL INSTRUCTIONS :

St. James's, January 19, 1929.

- 4 Order in Council providing for the Exercise of Jurisdiction in the Protectorate.—London, January 16, 1924  
Text in *State Papers*, Vol CXIX, page 20

See also WEST AFRICA

# i. Legislative Council Order in Council, 1924 (as amended 1931).

- 4 The Council shall consist of —

The Governor as president ;

Eleven official members ,

Three elected unofficial members , and not more than seven nominated unofficial members, of whom three shall be Paramount Chiefs of the Protectorate

- 5 (1) The official members of the Council shall consist of the following persons —

The four senior members of the Executive Council holding office in Sierra Leone ,

The officers lawfully discharging the functions of the Commissioners of the Northern and Southern Provinces of the Protectorate ,

The officers lawfully discharging the functions of Comptroller of Customs, Director of Public Works, Director of Education, General Manager of Railways, and Director of Agriculture.

(2) Whenever the Attorney-General for the time being is unable, although present in Sierra Leone, to attend a meeting of the Council, the Solicitor-General may attend in his place and with the same precedence

- 6 The elected unofficial members of the Council shall be elected by persons duly qualified as electors as hereinafter provided who are resident within the electoral districts hereinafter prescribed.

- 8 The nominated unofficial members of the Council shall be such persons not holding office in Sierra Leone as the Governor may, from time to time, by instrument under the Public Seal appoint, subject to disallowance or confirmation by His Majesty, signified through a Secretary of State

Every such member shall vacate his seat at the end of 5 years from the date of the instrument by which he is appointed or at such earlier date as may be provided by that instrument .

Provided that if any such member is provisionally appointed, as hereinafter provided, to fill a vacant seat in the Council, and his provisional appointment is immediately followed by his definitive appointment, the aforesaid period of 5 years shall be reckoned from the date of the instrument provisionally appointing him.

Every such member shall be eligible to be re-appointed by the Governor for a further term not exceeding 5 years, subject to the approval of His Majesty, signified through a Secretary of State.

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17. Any person (save as hereinafter excepted) who shall be registered as an elector for the election of elected members of the Council, and

(a) who is seised or possessed of real or personal property or both to the value of £250, shall be qualified and entitled to be elected a representative of the urban electoral district, as defined in article 7 in this Order, and

(b) who is seised or possessed of real or personal property or both to the value or amount of £100, shall be qualified and entitled to be elected a representative of the rural electoral district.

18. No person shall be capable of being elected a member of the Council, or, having been elected, shall sit or vote in the Council, who—

(1) is not of the age of 25 years or upwards ; or

(2) has been sentenced by any competent British court, whether of Sierra Leone or not, for any crime punishable by death, hard labour for any period, or imprisonment for a period exceeding one year, and has not received a free pardon from His Majesty *for the crime for which he has been so sentenced ; or*

(3) is an undischarged bankrupt, whether he has been declared a bankrupt by a court in Sierra Leone or by any other British court ; or

(4) has within 5 years before the election received charitable relief in Sierra Leone from any public source ; or

(5) has been dismissed from the Government service ; or

(6) has been debarred from practising as a legal or medical practitioner by order of any competent authority ; or

(7) is of unsound mind ; or

(8) is in receipt of salary payable out of the public revenue of Sierra Leone ; or

(9) is not registered as an elector.

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23 (1) Every male person shall be entitled to be registered as an elector, and when registered to vote at the election of elected members of the Council, who—

(a) is a British subject, or a native of the Protectorate of Sierra Leone, and

(b) is of the age of 21 years or upwards; and

(c) has been ordinarily resident for the 12 months immediately preceding the date of registration in the electoral district for which the election is being held, and

(d)—(i) has been for the 12 months immediately preceding the date of registration, the owner or occupier (jointly or severally) of any house warehouse, counting house, shop, store or other building (in this Order referred to as "qualifying property") in the electoral district of which the annual value is, in the urban electoral district not less than £10, and in the rural electoral district not less than £6 provided that where any persons appear to be joint occupiers of any qualifying property the names of such persons shall be placed on the register of electors if the annual assessed value of such qualifying property divided by the number of joint occupiers is not less than £10 in the urban or £6 in the rural electoral district, or

(ii) is in receipt of a yearly salary in the urban electoral district of at least £100 a year and in the rural electoral district of £60 a year

(2) The annual value of any qualifying property in respect of which any person shall claim to be registered as an elector shall be determined in the first instance and until objection is made thereto according to the amount at which such property is assessed for the purposes of city rates or house tax as the case may be, but when any objection is made to such assessment or if the qualifying property is not assessed for the above-named purposes then the annual value thereof shall be proved to the satisfaction of the person to be appointed to be the registering officer for the electoral district in which the property is situated

24 No person shall be entitled to be registered as an elector, or when registered to vote at the election of elected members of the Council, who—

(1) cannot read and write English or Arabic;

(2) has been sentenced by any competent British court, whether of Sierra Leone or not, for any crime punishable by death, hard labour for any period or imprisonment for any period exceeding one year, and has not received a free pardon from His Majesty for the crime for which he has been so sentenced, or

(3) is of unsound mind

No person who has been retained or employed for reward by or on behalf of a candidate at an election, for all or any of the

purposes of such election, as agent, clerk, messenger or in any other capacity, shall be entitled to vote at such election.

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### 3. Royal Instructions, 1924 (as amended 1929).

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4. The Executive Council of the Colony shall consist of the persons for the time being lawfully discharging the functions of Colonial Secretary, of Attorney-General, of Colonial Treasurer and of Director of Medical and Sanitary Services of the Colony, who shall be styled "*ex officio* members," and such other persons as we may from time to time appoint by any instruction or warrant under our Sign Manual and Signet, or as the Governor, in pursuance of instructions from us, through one of our Principal Secretaries of State, may from time to time appoint by an instrument under the Public Seal of the Colony, or as may be provisionally appointed by the Governor in the manner hereinafter provided.

Whenever upon any special occasion the Governor desires to obtain the advice of any person in Sierra Leone touching our affairs therein, he may, by an instrument under the Public Seal of the Colony, summon for such special occasion any such person as an extraordinary member of the Executive Council.

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### 4. Protectorate Order in Council, 1924.

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4. The Governor and Commander-in-Chief for the time being of the Colony shall be the Governor and Commander-in-Chief of the Protectorate.....

5. The Executive Council of the Colony shall be and be deemed to be the Executive Council of the Protectorate.

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9. All ordinances passed by the Legislative Council shall be subject to the following conditions or provisos:—

(1) In the making of ordinances any native laws by which the civil relations of any native Chiefs, tribes, or populations under His Majesty's protection are now regulated shall be respected,

except so far as the same may be incompatible with the due exercise of His Majesty's power and jurisdiction, or clearly injurious to the welfare of the said natives

(2) Every suit, action, complaint, matter, or thing which shall be depending in any court within the Protectorate at the commencement of this Order shall and may be proceeded with in such court in like manner as if this Order had not been passed

If any ordinance to which the provisions of this article apply shall be in any respect repugnant to the provisions of this Order or of any other Order made by His Majesty in Council, such ordinance shall be read subject to such Order and shall to the extent of such repugnancy be absolutely void

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14 The courts of the Colony shall have in respect of matters occurring within the Protectorate so far as such matters are within the jurisdiction of His Majesty, the same jurisdiction, civil and criminal original and appellate, as they respectively possess from time to time in respect of matters occurring within the said Colony, and the judgments, decrees, orders, and sentences of any such court made or given in the exercise of the jurisdiction hereby conferred may be enforced and executed, and appeals therefrom may be had and prosecuted in the same way as if the judgment, decree, order or sentence had been made or given under the ordinary jurisdiction of the court

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## SOMALILAND PROTECTORATE

- 1 Order in Council providing for Appeals to His Majesty in Council—London, February 15, 1909

Text in *Statutory Rules and Orders*, 1909, page 346

- 2 Order in Council providing for the Administration—London, December 17, 1929

Text in *Statutory Rules and Orders*, 1930, page 515

*Amendments*

## ORDERS IN COUNCIL :

London, March 28, 1930 .. .. Text in *Statutory Rules and Orders*, 1930, page 533.

Windsor, April 23, 1932 .. .. Text in *Statutory Rules and Orders*, 1932, page 518.

London, May 4, 1935 .. .. Text in *Statutory Rules and Orders*, 1935, page 480.

3. Royal Instructions to the Commissioner and Commander-in-Chief.—St. James's, May 2, 1932.

.. ..

# 1. Appeals Order in Council, 1909.

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30. Subject to the provisions of this Order, an appeal shall lie :—

(a) as of right, from any final judgment of the court where the matter in dispute on the appeal amounts to or is of the value of £500 sterling or upwards, or where the appeal involves, directly or indirectly, some claim or question to or respecting property, or some civil right amounting to or of the value of £500 sterling or upwards ; and

(b) at the discretion of the court, from any other judgment of the court, whether final or interlocutory, if, in the opinion of the court, the question involved in the appeal is one which, by reason of its great general or public importance, or otherwise, ought to be submitted to His Majesty in Council for decision.

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5. Leave to appeal under article 2 shall only be granted by the court in the first instance :—

(a) upon condition of the appellant, within a period to be fixed by the court but not exceeding 3 months from the date of the hearing of the application for leave to appeal, entering into good and sufficient security, to the satisfaction of the court, in a sum not exceeding £500, for the due prosecution of the appeal, and the payment of all such costs as may become payable to the respondent in the event of the appellant's not obtaining an order granting him final leave to appeal, or of the appeal being dismissed for non-prosecution, or of His Majesty in Council ordering the appellant to pay the respondent's costs of the appeal (as the case may be) ; and

(b) upon such other conditions (if any) as to the time or times within which the appellant shall take the necessary steps for the



purpose of procuring the preparation of the record and the despatch thereof to England as the court, having regard to all the circumstances of the case, may think it reasonable to impose

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## 2 Order in Council, 1929 (as amended 1930, 1932 and 1935)

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5 The powers conferred by this Order shall extend to the persons and matters following in so far as by treaty, grant, usage, sufferance, or other lawful means His Majesty has jurisdiction in relation to such persons and matters, that is to say (a) British subjects, (b) foreigners (c) the property and all personal or proprietary rights and liabilities in the Protectorate of British subjects and foreigners including ships with their boats, and the persons and property on board thereof, or belonging thereto, and (d) natives in the cases and according to the conditions specified in this Order, and not otherwise

Provided that jurisdiction over any foreign ships under this article shall not be exercised otherwise than according to the practice of the High Court in England in the exercise of jurisdiction over foreign ships

6 All His Majesty's jurisdiction exercisable in the Protectorate for the hearing and determination of suits, or for the maintenance of order or for the control or administration of persons or property, or in relation thereto, shall be exercised under and according to the provisions of this Order so far as such jurisdiction relates to British subjects and foreigners. Jurisdiction over natives shall be exercised only in such matters and to such extent as the court in its discretion thinks fit

\* \* \*

12 In all cases, civil and criminal, to which natives are parties, every court (a) shall be guided by native law, so far as it is applicable and is not repugnant to justice and morality, or inconsistent with any Order in Council or ordinance, or any regulation or rule made under any Order in Council or ordinance, and (b) shall decide all such cases according to substantial justice, without excessive regard to technicalities of procedure and without undue delay

\* \* \*

15 (1) The Governor may make ordinances for the administration of justice, the raising of revenue, and generally for the peace, order, and good government of all persons in the Protectorate. In the making of any ordinances the Governor shall conform to and observe all rules, regulations, and directions in that behalf contained in any Instructions under His Majesty's Sign Manual and Signet

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16. (i) Subject to the other provisions of this Order, and to any treaties for the time being in force relating to the Protectorate, His Majesty's criminal and civil jurisdiction in the Protectorate shall, so far as circumstances admit, be exercised on the principles of, and in conformity with, the enactments for the time being applicable as hereinafter mentioned of the Governor-General of India in Council, and of the Governor of Bombay in Council, and according to the course of procedure and practice observed by, and before, the courts in the Presidency of Bombay beyond the limits of the ordinary original jurisdiction of the High Court of Judicature at Bombay according to their respective jurisdiction and authority, and so far as such enactments, procedure, and practice are inapplicable, shall be exercised under, and in accordance with, the common and statute law of England.

\* \* \*

(iii) Any Act of the Governor-General of India in Council, or of the Governor of Bombay in Council, whether passed before or after the commencement of this Order, amending or substituted for any Act of either of those Legislatures which has been made applicable to and brought into operation in the Protectorate shall, subject to the provisions of this article, also apply to the Protectorate.

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28. Subject to the other provisions of this Order, the Code of Civil Procedure, "The Bombay Civil Courts Act, 1869," and the other enactments relating to the administration of civil justice for the time being applicable to the Protectorate, shall have effect as if the Protectorate were the Presidency of Bombay.

(i) For the purposes of these enactments the Protectorate Court shall be deemed to be the High Court, and the court authorised to hear appeals from and to revise the decisions of district courts ;

(ii) District courts shall be established under the provisions of "The Bombay Civil Courts Act, 1869," as applied by this Order ; and

(iii) The powers both of the Governor-General in Council and the local Government under those enactments shall be exercisable by the Secretary of State, or with his previous or subsequent assent, by the Governor.

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## SWAZILAND PROTECTORATE

- 1 Order in Council providing for the Exercise of Jurisdiction by the Governor of the Transvaal—London June 25, 1903

Text in *State Papers*, Vol XCVI, page 1126

*Amendments*

ORDERS IN COUNCIL

Sandringham, December 1, 1906  
XCIX, page 863

Text in *State Papers* Vol

London, October 18 1909  
and Orders, 1909, page 334

Text in *Statutory Rules*

- 2 Order in Council transferring to His Majesty's High Commissioner for South Africa the Powers vested in the Governor of the Transvaal—Sandringham, December 1, 1906

Text in *State Papers*, Vol XCIX, page 863

- 3 Order in Council transferring to His Majesty's High Commissioner for Basutoland, Bechuanaland Protectorate and Swaziland the Powers vested in His Majesty's High Commissioner for South Africa—London, December 20, 1934

Text in *Statutory Rules and Orders* 1934 Vol I page 658

- I Order in Council, 1903 (as amended 1906 and 1909)

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3 The Governor of the Transvaal may, on His Majesty's behalf, exercise all powers and jurisdiction which His Majesty, at any time before or after the date of this Order, had, or may have within Swaziland, and to that end may take or cause to be taken all such measures, and may do or cause to be done all such matters and things therein as are lawful and as in the interest of His Majesty's service he may think expedient, subject to such instructions as he may from time to time receive from His Majesty, or through a Secretary of State

4 The Governor may appoint a Resident Commissioner and so many fit persons as, in the interest of His Majesty's service, he may think necessary to be Assistant Commissioners, judges, magistrates or other officers, and may define from time to time the districts within which such officers shall respectively discharge their functions

Every such officer may exercise such powers and authorities as the Governor may assign to him, subject nevertheless to such directions and instructions as the Governor may from time to time think fit to give him. The appointment of such officers shall not abridge, alter, or affect the right of the Governor to execute and discharge all the powers and authorities hereby conferred upon him.

The Governor may remove any officer so appointed.

5. In the exercise of the powers and authorities hereby conferred upon him, the Governor may, amongst other things, from time to time by proclamation provide for the administration of justice, the raising of revenue, and generally for the peace, order, and good government of Swaziland, and of all persons therein, including the prohibition and punishment of acts tending to disturb the public peace.

The Governor, in issuing such proclamations, shall respect any native laws by which the civil relations of any native Chiefs, tribes, or populations under His Majesty's protection are now regulated, except so far as the same may be incompatible with the due exercise of His Majesty's power and jurisdiction, or clearly injurious to the welfare of the said natives.

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7. His Majesty may disallow any such proclamation wholly or in part, and may signify such disallowance by Order in Council or through a Secretary of State, and upon such disallowance being notified in the *Gazette*, the provisions so disallowed shall from and after a date to be mentioned in such notification, cease to have effect, but without prejudice to anything theretofore lawfully done thereunder. Due notification shall be publicly made by the Governor within Swaziland of the disallowance of any such proclamation.

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9. The Governor may as he shall see occasion, when any crime has been committed within Swaziland, or for which the offender may be tried therein, grant a pardon in His Majesty's name to any accomplice, not being the actual perpetrator of such crime, who shall give such information and evidence as shall lead to the apprehension and conviction of the principal offender; and further, may grant to any offender convicted of any crime in any court, or before any judge, justice, magistrate or other officer within Swaziland a pardon, either free or subject to lawful conditions, or any respite of the execution of the sentence of any such offender,

for such period as to the Governor may seem fit, and may remit any fines, penalties, or forfeitures which may become due and payable

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## TANGANYIKA MANDATED TERRITORY

- 1 Order in Council providing for the Administration—  
London, July 22, 1920

Text in *State Papers*, Vol CXIII page 97

*Amendment*

ORDER IN COUNCIL

London April 30, 1926

CXIII page 147

Text in *State Papers* Vol

- 2 Royal Instructions to the Governor and Commander-in-Chief—St James's, August 31, 1920

*Amendments*

ADDITIONAL INSTRUCTIONS

St James s, August 25 1926

St James s November 3, 1937

- 3 Order in Council constituting the Legislative Council—  
London, March 19, 1926

Text in *State Papers*, Vol CXIII, page 135

*Amendment*

ORDERS IN COUNCIL

London, March 29 1935

*Orders*, 1935, page 483

London, October 22 1937

*Orders* 1937, page 818

Text in *Statutory Rules and*

Text in *Statutory Rules and*

## I. Order in Council, 1920 (as amended 1926).

*At the Court at Buckingham Palace, the 22nd day of July, 1920.*

*Present: THE KING'S MOST EXCELLENT MAJESTY  
IN COUNCIL.*

*Whereas by the treaty of peace between the Allied and Associated Powers and Germany, signed at Versailles on the 28th day of June, 1919,<sup>(1)</sup> Germany renounced in favour of the Principal Allied and Associated Powers all her rights and titles over her oversea possessions:*

*And whereas the said treaty having been ratified as therein provided came into force on the 10th day of January, 1920:*

*And whereas it has been agreed between the Principal and Allied Associated Powers that the territories of Africa situate within the limits of this Order (being part of the territories formerly known as "German East Africa") shall be administered by His Majesty the King, subject to and in accordance with the provisions of the said treaty:<sup>(2)</sup>*

*And whereas accordingly by treaty, capitulation, grant, usage, sufferance and other lawful means His Majesty has power and jurisdiction within the said territories (hereinafter called "the Tanganyika Territory"):*

*Now, therefore, His Majesty, by virtue and in exercise of the powers on this behalf by "The Foreign Jurisdiction Act, 1890,"<sup>(3)</sup> or otherwise, in His Majesty vested, is pleased, by and with the advice of his Privy Council, to order, and it is hereby ordered as follows—*

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17. (1) There shall be a court of record styled "His Majesty's High Court of Tanganyika" (in this Order referred to as "the High Court"). Save as hereinafter expressed the High Court shall have full jurisdiction, civil and criminal, over all persons and over all matters in the Territory.

(2) Subject to the other provisions of this Order, such civil and criminal jurisdiction shall, so far as circumstances admit, be exercised in conformity with the Civil Procedure, Criminal Procedure and Penal Codes of India and the other Indian Acts and other laws which are in force in the Territory at the date of the commencement of this Order or may hereafter be applied or enacted, and subject thereto and so far as the same shall not extend or apply shall be exercised in conformity with the substance of the common law, the doctrines of equity and the statutes of general application in force in England at the date of this Order and with the powers vested in and according

<sup>(1)</sup> *State Papers*, Vol. CXII, page 1.

<sup>(2)</sup> The text of the mandate is in *State Papers*, Vol. CXVI, page 832.

<sup>(3)</sup> *State Papers*, Vol. LXXXII, page 656.

to the procedure and practice observed by and before courts of justice and justices of the peace in England according to their respective jurisdictions and authorities at that date, save in so far as the said Civil Procedure Criminal Procedure and Penal Codes of India and other Indian Acts and other laws in force as aforesaid and the said common law, doctrines of equity and statutes of general application and the said powers, procedure and practice may, at any time before the commencement of this Order, have been or may hereafter be modified, amended or replaced by other provision in lieu thereof by or under the authority of any Order of His Majesty in Council, or by any proclamation issued or by any ordinance or ordinances passed in and for the Territory provided always, that the said common law, doctrines of equity and statutes of general application shall be in force in the Territory so far only as the circumstances of the Territory and its inhabitants and the limits of His Majesty's jurisdiction permit, and subject to such qualifications as local circumstances may render necessary

(3) The High Court shall sit at such place or places as the Governor may appoint

(4) The High Court shall have a seal bearing the style of the Court and a device approved by the Secretary of State, but until such seal is provided a stamp bearing the words "High Court of Tanganyika" may be used instead thereof

18 (1) The High Court shall be a court of admiralty, and shall exercise admiralty jurisdiction in all matters arising on the high seas or elsewhere or upon any lake or other navigable inland waters or otherwise relating to ships or shipping

(2) The following enactments of "The Colonial Courts of Admiralty Act, 1890" <sup>(1)</sup> that is to say, section 2, sub-sections (2) to (4), sections 5 and 6, section 16 sub section (3), shall apply to the High Court as if in the said sections the said Court were mentioned in lieu of a colonial court of admiralty, and the Territory were referred to in lieu of a British possession

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21 (1) There shall also be a Special Tribunal, which shall consist of one of the judges of the High Court appointed by the Governor to hold such Tribunal, sitting either alone or together with such other person or persons as the Governor may direct

(2) The Special Tribunal shall exercise full jurisdiction in all civil causes and matters which arose before the commencement of this Order, and such jurisdiction shall, so far as circumstances admit, be exercised in conformity with the law and procedure in force in the Territory at the date when the cause of action arose, unless the

<sup>(1)</sup> *State Papers*, Vol LXXII, page 672

Special Tribunal shall be satisfied that some other law is applicable to such cause or matter or that the procedure in force under article 17 (2) of this Order is more suitable thereto, in which case it shall exercise the said jurisdiction in conformity with such law or procedure.

(3) All periods of prescription or limitation of rights of action, whether they began to run before or after the outbreak of war, shall be treated as having been suspended by the duration of the war, They shall begin to run again from the date of this Order.

(4) The Special Tribunal shall also exercise such other civil jurisdiction as may be assigned to it by or under the authority of any Order of His Majesty in Council or by any ordinance or ordinances passed in and for the Territory, and shall exercise such jurisdiction in conformity with the law and procedure mentioned in article 17 (2) of this Order.

(5) The Special Tribunal may, with the concurrence of the Governor, delegate to any subordinate court or to any officer in the Territory all or any of its powers under this Order. Such delegation shall, however, be subject to such limitations and to such conditions either with regard to appeal or otherwise as the Special Tribunal shall think fit.

(6) No appeal shall lie from any order, finding or decree of the Special Tribunal.

(7) Any order or decree of the Special Tribunal may be executed in the same manner as similar orders or decrees of the High Court are executed, and the Special Tribunal may in its discretion transfer any such order or decree to the High Court for execution and the High Court shall proceed as if such order or decree had been made by itself.

22. (1) Courts subordinate to the High Court and courts of special jurisdiction may be constituted by or under the provisions of any ordinance as occasion requires.

(2) Provision may be made by ordinance for the hearing and determining of appeals from any such court by the High Court or otherwise.

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24. In all cases civil and criminal to which natives are parties every court shall (a) be guided by native law so far as it is applicable and is not repugnant to justice and morality or inconsistent with any Order in Council or ordinance or any regulation or rule made under any Order in Council or ordinance ; and shall (b) decide all such cases according to substantial justice without undue regard to technicalities of procedure and without undue delay.



25 When any person has been sentenced to death the High Court shall transmit to the Governor a copy of the evidence, and the sentence shall not be carried into effect until confirmed by him

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## 2 Royal Instructions, 1920 (as amended 1926 and 1937)

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4 The Executive Council of the Territory shall consist of the persons for the time being lawfully discharging the functions of Chief Secretary to the Government of Attorney-General, of Financial Secretary, of Director of Medical Services, of Director of Education, and of Administrative Secretary, who shall be styled "*ex officio* members" of the Executive Council, and such other persons holding office in the public service of the Territory as the Governor, in pursuance of instructions from us through one of our Principal Secretaries of State, may from time to time appoint by an instrument under the Public Seal of the Territory, who shall be styled 'official members' of the Executive Council

Provided that if any official member of the Council shall cease to hold office in the public service of the Territory his seat in the Council shall thereupon become vacant

Whenever upon any special occasion the Governor desires to obtain the advice of any persons within the Territory relating to affairs therein, he may, by an instrument under the Public Seal of the Territory summon for such special occasion any such persons as extraordinary members of the Executive Council

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## 3 Legislative Council Order in Council, 1926 (as amended 1935 and 1937)

\* \* \*

5 The Council shall consist of —The Governor as president, thirteen official members and not more than ten unofficial members

6 The official members of the Council shall consist of the persons for the time being discharging the functions of —

The Chief Secretary, the Attorney General, the Financial Secretary, the Director of Medical Services, the Director of Education, the Administrative Secretary, the General Manager of the Railway, the Provincial Commissioner, Eastern Province the Controller of Customs the Director of Public Works, the Director of

Lands and Mines, the Director of Agriculture, the Postmaster-General of the Amalgamated Services of Kenya, Uganda and the Tanganyika Territory.

7. The unofficial members of the Council shall be such persons not holding office in the Territory as the Governor may from time to time by instrument under the Public Seal appoint, subject to disallowance or confirmation by His Majesty, signified through a Secretary of State.

Every such member shall vacate his seat at the end of 5 years from the date of the instrument by which he was appointed or at such earlier date as may be provided by that instrument.

Provided that if any such member is provisionally appointed as hereinafter provided to fill a vacant seat in the Council and his provisional appointment is immediately followed by his definitive appointment, the aforesaid period of 5 years shall be reckoned from the date of the instrument provisionally appointing him.

Every such member shall be eligible to be reappointed by the Governor for a further period or further periods each not exceeding 5 years, subject to the approval of His Majesty, signified through a Secretary of State.

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19. In making ordinances the Governor and Council shall respect existing native laws and customs except so far as the same may be opposed to justice or morality.

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## TRINIDAD AND TOBAGO

1. Order in Council constituting a Legislative Council—  
Windsor, April 16, 1924.

Text in *State Papers*, Vol. CXIX, page 105.

*Amendment*

ORDER IN COUNCIL:

London, July 30, 1928

.. Text in *State Papers*, Vol.

CXXVIII, page 86.

- 2 Letters Patent constituting the Office of Governor and Commander in Chief—Westminster June 6 1924

Text in *Statutory Rules and Orders* 1924 page 1907

- 3 Royal Instructions to the Governor and Commander in Chief—St James s June 6 1924

- 1 Legislative Council Order in Council, 1924 (as amended 1928)

*At the Court at Windsor Castle, the 16th day of April 1924*

PRESENT THE KING'S MOST EXCELLENT MAJESTY IN COUNCIL

Whereas by certain Letters Patent passed under the Great Seal of the United Kingdom of Great Britain and Ireland bearing date at Westminster the 1st day of October 1880<sup>(1)</sup> Her Majesty Queen Victoria did constitute the office of Governor and Commander in Chief in and over the island of Trinidad and its Dependencies (therein called the Colony) and did amongst other things provide for the establishment of a Legislative Council for the said Colony and did further reserve to herself her heirs and successors full authority with the advice of her or their Privy Council from time to time to make all such laws as might appear to her or them necessary for the peace order and good government of the Colony

And whereas by an Order of Her said Majesty in Council bearing the date the 17th day of November, 1888<sup>(2)</sup> it was ordered that from and after the 1st day of January 1889 the Colony of Trinidad and its Dependencies and the Colony of Tobago should be united into and constitute one Colony which should be called the Colony of Trinidad and Tobago and that from and after the same day the said recited Letters Patent should subject to the provisions of the said Order apply to the Colony of Trinidad and Tobago

And whereas by a further Order of Her said Majesty in Council bearing the date the 20th day of October 1898<sup>(3)</sup> the aforesaid Order in Council was amended

And whereas His Majesty has this day by and with the advice of his Privy Council been pleased to direct that Letters Patent<sup>(4)</sup> be passed under the Great Seal of the United Kingdom of Great Britain and Ireland for the purpose of providing for the Government of the said Colony of Trinidad and Tobago as in the said Letters Patent more fully appears and the draft of the said Letters Patent has this day been approved by His Majesty in Council

(1) *Statutory Rules and Orders* revised to December 31 1903 Vol XIII Trinidad page 1

(2) *Ibid* Vol XIII Trinidad page 4

(3) *Ibid* Vol XIII Trinidad page 5

(4) Page 605

*Now, therefore, His Majesty, by virtue and in exercise of all powers enabling him in that behalf, is pleased, by and with the advice of his Privy Council, to order, and it is hereby ordered, as follows :—*

1. This Order may be cited as " The Trinidad and Tobago (Legislative Council) Order in Council, 1924."
2. This Order shall apply to the Colony of Trinidad and Tobago (hereinafter referred to as " the Colony ").
3. In this Order " His Majesty " includes His Majesty's heirs and successors ; " Secretary of State " means one of His Majesty's Principal Secretaries of State ; " Governor " means the Governor and Commander-in-Chief for the time being of the Colony and includes every person for the time being administering the Government of the Colony ; " the Council " means the Legislative Council established by or under the provisions of the last hereinbefore recited Letters Patent, which Council shall be known as " the Legislative Council of Trinidad and Tobago."
4. The Council shall consist of the Governor as President, twelve official members and thirteen unofficial members.
5. The official members of the Council shall be the persons from time to time lawfully discharging the functions of the respective offices of Colonial Secretary, Attorney-General and Treasurer of the Colony (herein referred to as " *ex officio* members "), and such other persons holding public office under the Crown in the Colony, and not exceeding nine in number at any one time (herein referred to as " nominated official members "), as the Governor may from time to time nominate and appoint by an instrument under the Public Seal of the Colony subject to confirmation or disallowance by His Majesty signified through a Secretary of State.
6. The unofficial members of the Council shall be—
  - (1) Such persons not holding public office under the Crown in the Colony and not exceeding six in number at any one time (herein referred to as " nominated unofficial members "), as the Governor may from time to time nominate and appoint by an instrument under the Public Seal of the Colony, subject to confirmation or disallowance by His Majesty signified through a Secretary of State.
  - (2) Seven persons to be elected as hereinafter provided (herein referred to as " elected members ").
7. The Governor shall without delay report to His Majesty, for his confirmation or disallowance, to be signified through a Secretary of State, every appointment of any person as a nominated member of the Council. Every such person shall hold his place on the Council during His Majesty's pleasure.

8 The nominated members of the Council shall vacate their seats at the next dissolution of the Council after their appointment, unless previously removed by virtue of instructions or warrant or warrants under His Majesty's Sign Manual and Signet or through a Secretary of State, but may be reappointed by the Governor by an instrument under the Public Seal of the Colony, subject to His Majesty's approval signified through a Secretary of State

Provided that if any nominated official member of the Council ceases to hold public office under the Crown in the Colony, his seat in the Council shall thereupon become vacant

9 Any person holding a public office under the Crown in the Colony may be required to serve as a nominated official member of the Council, and if any such person having been appointed by the Governor a member shall decline to act in that capacity he shall *ipso facto* vacate his office

10 (1) Whenever the seat of a nominated member shall become vacant, or whenever any nominated member shall, with the permission of the Governor, resign his seat in the Council by writing under his hand addressed to the Governor, or shall die, or be suspended from the exercise of his functions as a member of the Council, or be declared by the Governor by an instrument under the Public Seal of the Colony to be incapable of exercising his functions as a member of the Council, or be temporarily absent from the Colony, or being a nominated official member shall either permanently or temporarily become an *ex officio* member of the Council or shall be on leave of absence granted by the Governor, the Governor may, by an instrument under the Public Seal of the Colony, provisionally appoint in his place some person to be temporarily a member of the Council

(2) The Governor shall without delay report to His Majesty for his confirmation or disallowance signified through a Secretary of State every provisional appointment of any person as a nominated member of the Council. Every such person shall hold his place in the Council during His Majesty's pleasure and every such provisional appointment may be disallowed by His Majesty through a Secretary of State or may be revoked by the Governor by an instrument under the Public Seal of the Colony.

(3) Every person so provisionally appointed shall be to all intents and purposes a member of the Council until his appointment shall be disallowed, or revoked, or superseded by the definitive appointment of a nominated member of the Council, or until the person in whose place he has been appointed shall be relieved from suspension, or declared by the Governor by an instrument under the Public Seal of the Colony to be capable of exercising the functions of a member of the Council, or shall return to the Colony, or shall cease to be an *ex officio* member, or shall resume the duties of his public office, as the case may be

11. If any nominated member of the Council, when duly summoned to attend, absents himself without sufficient cause, and persists in such absence, after being thereof admonished by the Governor, the Governor is to suspend such member until His Majesty's pleasure therein be known, giving immediate notice thereof to His Majesty through a Secretary of State.

12. If any nominated unofficial member of the Council shall, without the leave of the Governor previously obtained, be absent from the sittings of the Council for 3 months, or shall make any declaration or acknowledgment of allegiance to any foreign State or Power, or shall become a citizen or subject of any foreign State or Power, or shall be adjudicated a bankrupt, or shall make a composition or arrangement with his creditors, or shall be sentenced in any part of His Majesty's dominions to death or penal servitude, or to imprisonment with hard labour or for a term exceeding 12 months, or shall accept any office of emolument under the Crown or under the Government of the Colony, his seat in the Council shall thereupon become vacant.

13. (1) The Governor may, by an instrument under the Public Seal of the Colony, suspend any nominated member from the exercise of his functions as a member of the Council.

(2) Every such suspension shall be forthwith reported by the Governor to a Secretary of State and shall remain in force unless and until either it shall be removed by the Governor by an instrument under the said Seal, or it shall be disallowed by His Majesty through a Secretary of State, and such disallowance shall be published in the *Trinidad Royal Gazette*.

14. The members of the Council shall take precedence as His Majesty may specially assign and, in default thereof, first the *ex officio* members in the order in which their respective offices are above mentioned; secondly, the nominated official members according to the priority of their respective appointments to the Council, or if appointed by the same instrument, according to the order in which they are named therein; thirdly, the unofficial members in order of date of appointment or election, or if appointed or elected on the same day, according to the alphabetical order of their names. Provided always that every such member re-appointed or re-elected on the termination of his term of office shall take precedence according to the date from which he has been continuously a member of the Council.

15. (1) No member of the Council shall sit or vote therein until he shall have taken and subscribed the following oath before the Council:—

“I, A.B., do swear that I will be faithful and bear true allegiance to His Majesty King George V, his heirs and successors according to law.

“So help me God.”

(2) Provided that every person authorised by law to make an affirmation or declaration instead of taking an oath may make such affirmation or declaration instead of the said oath

16 The elected members shall be elected by persons duly qualified as electors as hereinafter provided

17 For the purposes of the election of members the Colony shall be divided into the following seven electoral districts —

(1) City of Port-of-Spain (as defined by "The Port-of Spain Corporation Ordinance, 1914," or any enactment amending the same)

(2) County of St George (exclusive of the city of Port-of Spain)

(3) County of Caroni

(4) County of Victoria

(5) County of St Patrick

(6) Counties of St David, St Andrew, Nariva and Mayaro

(7) Ward of Tobago

One member shall be elected for each of the said districts

18 No person shall be qualified to be elected a member of the Council or having been elected, to sit or vote in the Council unless—

(a) he is of the male sex and is entitled to be, and is in fact, registered as a voter

(b) he is able to read and write English, and

(c) he possesses in his own right one or more of the following qualifications namely —

(i) Real estate of the value of at least £2,500 above all charges and encumbrances affecting the same, or from which he derives a clear annual income of not less than £200, or

(ii) A clear annual income of over £400 arising from any source

Provided that—

(1) A person shall not be entitled to be elected or to be a member of the Council for any electoral district unless he is resident in that district and has resided therein for the 12 months immediately preceding the date of election or possesses in that electoral district real estate belonging to him in his own right of the value of at least £5,000 above all charges and encumbrances affecting the same, or from which he derives a clear annual income of not less than £400

(2) A person shall not be entitled to be elected or to be a member of the Council if he is the holder of any office of emolument under the Crown or under the Government of the Colony, or is a minister of religion

The term "minister of religion" in this clause and in clause 20 of this Order means any clergyman, minister, priest, or other person

who exercises spiritual functions or performs the offices of religion for or in respect to any Christian or other church, community or body within the Colony.

The term "office of emolument" in this clause does not include a pension or other allowance to an officer who has ceased to be in the service of the Crown or under the Government of the Colony.

19. Every person who, having been returned as an elected member of the Council, but not having been at the time of his election qualified to be an elected member, shall sit or vote in the Council, shall for every day on which he sits or votes, and every person who shall sit or vote in the Council after his seat has become vacant shall for every day on which he sits or votes after his seat has become vacant, be liable to a penalty of £20 to be recovered by action in the Supreme Court of Trinidad and Tobago by any person who shall sue for the same.

20. If any elected member of the Council shall die, or shall, by writing under his hand, addressed to the Governor, resign his seat in the Council, or shall cease to possess a property or income qualification as required by clause 18 of this Order, or shall, without the leave of the Governor previously obtained, be absent from the sittings of the Council for 3 months, or shall make any declaration or acknowledgment of allegiance to any foreign State or Power, or shall become a citizen or subject of any foreign State or Power, or shall be adjudicated a bankrupt, or shall make a composition or arrangement with his creditors, or shall be sentenced in any part of His Majesty's dominions to death or penal servitude, or to imprisonment with hard labour or for a term exceeding 12 months, or shall accept any office of emolument under the Crown or under the Government of the Colony, or shall become a minister of religion, his seat in the Council shall thereupon become vacant.

Whenever it shall be shown to the satisfaction of the Governor that the seat of an elected member has become vacant the Governor shall, as soon as possible, issue a writ for the election of a new member in the place of the member whose seat has become vacant.

21. All questions which may arise as to the right of any person to be or remain an elected member of the Council shall be referred to and decided by the Supreme Court of Trinidad and Tobago.

22. Every person shall be entitled to be registered as a voter in any one electoral district, and, when registered, to vote at the election of a member of the Council for such district, who is qualified as follows :—

(a) being a man, has attained the age of 21 years, or being a woman, has attained the age of 30 years ;

(b) is under no legal incapacity ;



(c) is a British subject by birth or naturalisation,

(d) has resided in the Colony for at least 2 years prior to the date of such registration, or is domiciled in the Colony and is resident therein at the date of such registration,

(e) is able to satisfy the registering officer that he or she can understand the English language when spoken,

and is, in the electoral district in which he or she claims to be registered, at the date of such registration, and has been for at least 12 months immediately prior to such date, also possessed of one or more of the following qualifications, namely —

(1) is in occupation, as owner, of premises assessed to any house rate, or taxes under section 3 of "The Lands and Buildings Taxes Ordinance, 1920", at an annual rateable value of not less than £12 10s in Port of Spain or any borough and £10 elsewhere, or is in occupation, as tenant, of premises in respect of which he or she really and *bonâ fide* pays rent at a rate not less than £12 10s per annum in Port of Spain or any borough, and £10 per annum elsewhere or

(2) is in occupation as a lodger, of lodgings, and as such lodger has paid during the preceding 12 months not less than £12 10s for rent alone or not less than £62 10s for rent and board combined, and has also resided in such lodgings during the whole of such period or

(3) is in occupation as owner or as tenant under agreement in writing for one year or upwards, of land or of land and house thereon, assessed to taxes under section 3 of "The Lands and Buildings Taxes Ordinance 1920," and in respect of which not less than 10s a year is payable in such taxes, or

(4) is in receipt of an annual salary of not less than £62 10s  
Provided that—

(a) When the qualifying property in (1) is jointly occupied by more persons than one then each of such occupiers shall be entitled to be registered in respect of such property, if the annual rateable value at which the property is assessed to the house rate or taxes is an amount which, when divided by the number of occupiers, shall not give less than £12 10s or £10, as the case may be, for each such occupier

(b) When the qualifying property in (3) is jointly occupied by more persons than one, then each of such occupiers shall be entitled to be registered in respect of such property if the amount payable in taxes in respect of such property is an amount which, when divided by the number of occupiers, shall give not less than 10s a year for each such occupier

23 No person shall be entitled to be registered as a voter if—

(a) he or she has, within the 6 months immediately preceding the date of registration, received poor relief from public funds, or

(b) he or she has been sentenced by any court in any part of His Majesty's dominions to death or to penal servitude or to imprisonment with hard labour for any term exceeding 12 months, and has not either suffered the punishment to which he or she was sentenced or such other punishment as by competent authority was substituted for the same or received a free pardon from His Majesty ;

(c) he or she has been adjudged by a competent court to be of unsound mind.

24. As soon as possible after the coming into operation of this Order a register shall be made in each of the said electoral districts of the persons entitled to vote at the election of members of the Council, and shall come into force at such time as shall be appointed by the Governor by proclamation to be published in the *Trinidad Royal Gazette*. Thereafter a fresh register shall be made in each such district at such date, not being later than 5 years after the date of the last general election, and every such register shall come into force at such time as shall be appointed by any law enacted by the Governor with the advice and consent of the Council.

No person who is not registered as a voter shall vote at any such election.

25. For the purpose of every general election of members of the Council, and for the purpose of the election of members to supply vacancies caused by death, resignation, or otherwise, the Governor shall issue writs of election under the Public Seal of the Colony, addressed to the returning officers of the respective electoral districts for which members are to be returned. Every such writ shall specify the day and place of election, and the day on which it is returnable to the Governor : upon receipt of such writ the returning officer shall proceed to hold the election thereby directed ; and after such election he shall certify the return of the member elected by endorsement on the writ, and shall return the writ so endorsed to the Governor within the time for that purpose specified therein. He shall also, as soon as possible, give public notice of the candidate elected, and in the case of a contested election of the number of votes given for each candidate whether elected or not.

26. In the case of a poll at an election of a member of the Council the votes shall be given by ballot. The ballot of each voter shall consist of a paper (in this Order called a " ballot paper ") showing the names and descriptions of the candidates. Each ballot paper shall have a number printed on the back, and shall have attached to it a counterfoil with the same number printed on the face. At the time of voting the ballot paper shall be marked on both sides with an official mark and delivered to the voter within the polling station, and the number of such voter on the register of voters shall be marked on the counterfoil, and the voter having secretly marked his or her vote on the paper, and folded up the paper so

as to conceal his or her vote, shall place it in a closed box in the presence of the officer presiding at the polling station after having shown to him the official mark at the back.

Any ballot paper which has not on its back the official mark, or on which a vote is given to more than one candidate or on which anything except the said number on the back is written or marked, by which the voter can be identified, shall be void and not counted.

After the close of the poll the ballot boxes shall be sealed so as to prevent the introduction of additional ballot papers and shall be taken charge of by the returning officer, who shall, in the presence of such agents (if any) of the candidates as may be in attendance open the ballot boxes and ascertain the result of the poll by counting the votes given to each candidate, and shall forthwith declare to be elected the candidate to whom the majority of the votes have been given.

The decision of the returning officer as to any question arising in respect of any ballot paper shall be final, subject to reversal on petition questioning the election or return.

27 Whenever there is an equality of votes between candidates at any election of a member of the Council and the addition of a vote would entitle any of such candidates to be declared elected, the returning officer, if he is a registered elector of the electoral district for which the election is held, may give such additional vote but the returning officer shall not, in any other case, be entitled to vote at an election for which he is the returning officer.

28 A petition complaining of an undue return or undue election of a member of the Council in this Order called an "election petition" may be presented to the Supreme Court by any one or more of the following persons that is to say—(1) some person who voted or had a right to vote at the election to which the petition relates, (2) some person claiming to have had a right to be returned at such election, (3) some person alleging himself to have been a candidate at such election.

29 Every election petition shall be tried before the Supreme Court in the same manner as a suit commenced by a writ of summons. At the conclusion of the trial, the Chief Justice shall determine whether the member of Council whose return or election is complained of or any and what other person was duly returned or elected, or whether the election was void and shall certify such determination to the Governor and upon such certificate being given, such determination shall be final, and the return shall be confirmed or altered, or a writ for a new election shall be issued, as the case may require, in accordance with such determination.

30 At the trial of an election petition the Chief Justice shall subject to the provisions of this Order or of any proclamation to be made by the Governor have the same powers jurisdiction,

and authority, and witnesses shall be subpoenaed and sworn in the same manner, as nearly as circumstances will admit, as in a trial of a civil action in the Supreme Court, and shall be subject to the same penalties for perjury.

31. Subject to the provisions of this Order, the election of members of the Council shall be held and the registration of voters for the election of such members shall be effected at such times, in such places, and in such manner and form, and by such officers, and with such provisions for ascertaining the qualifications of voters and candidates, and all questions and disputes arising with regard to any such matters shall be determined by such tribunals and in such manner, as may from time to time be ordained by any law or laws enacted by the Governor with the advice and consent of the Council, and in the meantime, and until provisions have been made for the purposes aforesaid by the enactment of any such law or laws as aforesaid, as shall be directed by any proclamation or proclamations to be issued by the Governor and published in the *Trinidad Royal Gazette*. Every proclamation made in pursuance of this clause shall from the publication thereof have the same force and effect as if it had been a law enacted by the Governor with the advice and consent of the Council as aforesaid.

32. The following persons shall be deemed guilty of bribery within the meaning of this Order :—

(1) Every person who, directly or indirectly, by himself or by any other person on his behalf, gives, lends, or agrees to give or lend, or offers, promises, or promises to procure or to endeavour to procure, any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter, or to or for any other person in order to induce any voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of such voter having voted or refrained from voting at any election.

(2) Every person who, directly or indirectly, by himself or by any other person on his behalf, gives or procures, or agrees to give or procure, or offers, promises, or promises to procure or to endeavour to procure, any office, place, or employment to or for any voter, or to or for any person on behalf of any voter, or to or for any other person in order to induce such voter to vote or refrain from voting, or corruptly does any act as aforesaid on account of any voter having voted or refrained from voting at any election.

(3) Every person who, directly or indirectly, by himself or by any other person on his behalf, makes any such gift, loan, offer, promise, procurement, or agreement as aforesaid to or for any person, in order to induce such person to procure, or endeavour to procure, the return of any person as an elected member of the Council, or the vote of any voter at any election.

(4) Every person who, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procures or engages, promises or endeavours to procure the return of any person as an elected member of the Council, or the vote of any voter at any election

(5) Every person who advances or pays, or causes to be paid, any money to or to the use of any other person, with the intent that such money, or any part thereof, shall be expended in bribery at any election, or who knowingly pays or causes to be paid, any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election

(6) Every voter who, before or during any election, directly or indirectly, by himself or by any other person in his behalf, receives, agrees, or contracts for any money, gift, loan, or valuable consideration, office place, or employment for himself or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting at any election

(7) Every person who, after any election, directly or indirectly, by himself or by any other person on his behalf, receives any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any election

(8) Every person who directly or indirectly, corruptly pays any rate or tax on behalf of any other person for the purpose of enabling him to be registered as a voter in order thereby to influence his vote at any future election, and every person on whose behalf, and with whose privity, any such payment as last aforesaid is made

33 The following persons shall be deemed guilty of treating within the meaning of this Order —

(1) Every person who corruptly, by himself or by any other person, either before during, or after an election, directly or indirectly, gives or provides or pays wholly or in part the expense of giving or providing any food, drink, entertainment, or provision to or for any person for the purpose of corruptly influencing that person, or any other person, to vote or to refrain from voting, at such election, or on account of such person or any other person having voted or refrained from voting at such election

(2) Every voter who corruptly accepts or takes any such food, drink, entertainment, or provision

34 Every person who, directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of, any force, violence, or restraint, or inflicts or threatens to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person, in order to induce or compel such person to vote or refrain from voting or on account

of such person having voted or refrained from voting at any election, or who by abduction, duress, or any fraudulent contrivance, impedes or prevents the free exercise of the franchise of any voter, or thereby compels, induces, or prevails upon any voter either to give or refrain from giving his vote at any election, shall be guilty of undue influence within the meaning of this Order.

35. Every person who at an election applies for a ballot paper in the name of another person, whether that name be the name of a person living or dead, or of a fictitious person, or who, having voted once at any election, applies at the same election for a ballot paper in his own name, shall be guilty of personation within the meaning of this Order.

36. Every person who is guilty of bribery, treating, or undue influence, shall, on conviction thereof, be liable to be imprisoned, with or without hard labour, for a term not exceeding one year, or to be fined any sum not exceeding £200.

37. Every person who is guilty of personation, or of aiding, abetting, counselling, or procuring the commission of the offence of personation, shall, on conviction thereof, be liable to be imprisoned, with or without hard labour, for a term not exceeding 2 years.

38. Every person who is convicted of bribery, treating, undue influence, or personation, or of aiding, counselling, or procuring the commission of the offence of personation, shall (in addition to any other punishment) be incapable during a period of 7 years from the date of conviction—

(1) Of being registered as a voter, or voting at any election of a member of the Council.

(2) Of being elected a member of the Council, or, if elected before his conviction, of retaining his seat as such member.

39. Every person who—

(1) Votes, or induces or procures any person to vote, at any election, knowing that he or such other person is prohibited by this Order, or by any law, from voting at such election ;

(2) Before or during an election knowingly publishes a false statement of the withdrawal of a candidate at such election for the purpose of promoting or procuring the election of another candidate ; shall be guilty of an illegal practice, and shall, on summary conviction thereof, be liable to a fine not exceeding £100, and be incapable, during a period of 5 years from the date of conviction, of being registered as a voter, or voting at any election of a member of the Council.

40. Every person who—

(1) Forges or counterfeits, or fraudulently defaces or destroys, any ballot paper or the official mark on any ballot paper ; or

(2) Without due authority supplies a ballot paper to any person ,  
or

(3) Fraudulently puts into any ballot box any paper other than the ballot paper which he is authorised by law to put in ; or

(4) Fraudulently takes out of the polling station any ballot paper , or

(5) Without due authority destroys, takes, opens, or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of any election , or

(6) Not being duly registered as a voter, votes at the election of a member of the Council ,

shall be guilty of misdemeanour, and be liable, if he is a returning officer or presiding officer, or clerk employed at a polling station, to imprisonment for any term not exceeding 2 years, with or without hard labour, or to a fine not exceeding £200, and, if he is any other person to imprisonment for any term not exceeding 6 months, with or without hard labour, or to a fine not exceeding £50

Any attempt to commit any offence specified in this clause shall be punishable in the manner in which the offence itself is punishable

In any information or prosecution for an offence in relation to the ballot boxes, ballot papers, and other things in use at an election, the property in such ballot boxes, ballot papers, or things may be stated to be in the returning officer at such election

41 Every officer, clerk and agent in attendance at a polling station shall maintain and aid in maintaining the secrecy of the voting in such station, and shall not communicate, except for some purpose authorised by law, before the poll is closed, to any person any information as to the name or number on the register of voters of any voter who has or has not applied for a ballot paper or voted at that station, and no person shall interfere with or attempt to interfere with a voter when marking his vote, or otherwise attempt to obtain in the polling station any information as to the candidate for whom any voter in such station is about to vote or has voted, or as to the number on the back of the ballot paper given to any voter at such station

Every officer, clerk and agent in attendance at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting and shall not attempt to ascertain at such counting the number on the back of any ballot paper or communicate any information obtained at such counting as to the candidate for whom any vote is given in any particular ballot paper No person shall, directly or indirectly, induce any voter to display his ballot paper after he has marked it so as to make known to any person the name of the candidate for whom or against whose name he has so marked his vote

Every person who acts in contravention of the provisions of this clause shall be liable, on summary conviction before a magistrate, to imprisonment for any term not exceeding 6 months, with or without hard labour, or to a fine not exceeding £50.

42. In the preceding clauses 32 to 41, words importing the masculine gender shall include females.

43. The Council shall not be disqualified from the transaction of business on account of any vacancies among the official or unofficial members thereof.

44. The Governor, if present, or, in the absence of the Governor, such member of the Council as the Governor shall from time to time appoint, or in default thereof or in the absence of such member, the member present who stands first in order of precedence, shall preside at the meetings of the Council.

45. The Council shall not be competent to act in any case unless eight members at the least besides the Governor or the member presiding be present at and throughout the meetings of such Council.

46. All questions proposed for debate in the Council shall be decided by a majority of votes, and the Governor or the member presiding shall have an original vote in common with the other members of the Council, and also a casting vote, if upon any question the votes shall be equal.

47. The Governor may, with the advice of the Council, from time to time make, alter, revoke, and renew such standing rules and orders as may be necessary to ensure punctuality of attendance of the members of the Council, and to prevent meetings of the Council being holden without convenient notice to the several members thereof, and to maintain order and method in the despatch of business, and in the conduct of debates in the Council, and to secure due deliberation in the passing of laws, and to provide that before the passing of any law intended to affect the interests of private persons due notice of the same is given to all persons concerned therein.

All such rules and orders, not being repugnant to the provisions of this Order, or of any other Order of His Majesty in Council or any Letters Patent for the time being in force in the Colony, or to any Instructions which the Governor may from time to time receive from His Majesty under His Majesty's Sign Manual and Signet, shall at all times be followed and observed, and shall be binding upon the Council, unless the same or any of them shall be disallowed by His Majesty.

And until any such rules and orders shall be made, and subject to any rules and orders to be so made, the standing rules and orders of the Legislative Council in force at the date of the coming into



operation of this Order shall remain in force and apply, so far as the same are applicable thereto, to the Council constituted in accordance with this Order

48 Subject to the provisions of this Order the Governor and the Council shall, in the transaction of the business of the Council and the passing of, and assenting to, bills or ordinances, conform as nearly as may be to the directions contained in any Instructions under His Majesty's Sign Manual and Signet which may be addressed to the Governor in that behalf, but no ordinance enacted by the Governor, with the advice and consent of the Council, shall be invalid by reason that in the enactment thereof any such Instructions were not duly observed

49 It shall be competent for any member of the Council to propose any question for debate therein, and such question, if seconded by any other member, shall be debated and disposed of according to the standing rules and orders. Provided always that every law, vote, resolution, or question the object or effect of which may be to dispose of or charge any part of our revenue arising within the Colony or to revoke, alter or vary any such disposition or charge shall be proposed by the Governor, unless the proposal of the same shall have been expressly allowed or directed by him

50 The sessions of the Council shall be held at such times and places as may be prescribed by the standing rules and orders of the Council or as the Governor shall from time to time by proclamation in the *Trinidad Royal Gazette* appoint. There shall be at least one session of the Council in every year, and there shall not be an interval of 12 months between the last sitting in one session and the first sitting in the next session. The first session shall be opened within 6 months after the coming into operation of this Order

51 The Governor may at any time, by proclamation, prorogue or dissolve the Council

The Governor shall dissolve the Council at the expiration of 3 years from the date of the publication in the *Trinidad Royal Gazette* of the return of the first member elected at the first general election held under this Order, if it shall not have been sooner dissolved, and thereafter shall dissolve the Council at the expiration of 5 years from the date of the publication in the said *Gazette* of the return of the first member elected at the last preceding general election, if it shall not have been sooner dissolved

52 The first general election of members of the Council shall be held at such time not more than 6 months after the coming into operation of this Order, and a general election shall be held at such time within 2 months after every dissolution of the Council as the Governor shall by proclamation appoint

53 Minutes shall be regularly kept of all the proceedings of the Council, and at each meeting of the Council the minutes of the last

preceding meeting shall be confirmed or amended, as the case may require, before proceeding to the despatch of any other business. The Governor shall transmit to His Majesty through a Secretary of State as soon as possible after every meeting a full and exact copy of the minutes thereof.

54. This Order shall be published in the *Trinidad Royal Gazette*, and shall come into operation on a day<sup>(1)</sup> to be fixed by the Governor by proclamation in the said *Gazette*; and the Governor shall give directions for the publication of this Order at such places and in such manner and for such time or times as he thinks proper for giving due publicity thereto within the Colony.

55. His Majesty hereby reserves to himself, his heirs and successors, full power and authority from time to time to revoke, alter, or amend this Order, as to him, or them, shall seem fit.

And the Right Honourable James Henry Thomas, one of His Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.

M. P. A. HANKEY.

## 2. Letters Patent, 1924.

*George V, by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India. To all to whom these presents shall come, Greeting:*

*Whereas by certain Letters Patent passed under the Great Seal of our United Kingdom of Great Britain and Ireland bearing date at Westminster the 1st day of October, 1880,<sup>(2)</sup> Her Majesty Queen Victoria did constitute, order, and declare that there should be a Governor and Commander-in-Chief in and over our island of Trinidad and its Dependencies:*

*And whereas by an Order in Council, bearing date the 17th day of November, 1888,<sup>(3)</sup> it was ordered that from and after the 1st day of January, 1889, the Colony of Trinidad and its Dependencies and the Colony of Tobago should be united into and constitute one Colony, which should be called "the Colony of Trinidad and Tobago":*

*And whereas by a further Order in Council bearing date the 20th day of October, 1898,<sup>(4)</sup> the aforesaid Order in Council was amended:*

*And whereas by certain further Letters Patent bearing date at Westminster the 9th day of January, 1913,<sup>(5)</sup> we did make further provision for the administration of the Government of the said Colony:*

<sup>(1)</sup> August 21, 1924.

<sup>(2)</sup> *Statutory Rules and Orders* revised to December 31, 1903, Vol. XIII, Trinidad, page 1.

<sup>(3)</sup> *Ibid.*, Vol. XIII, Trinidad, page 4.

<sup>(4)</sup> *Ibid.*, Vol. XIII, Trinidad, page 5.

<sup>(5)</sup> *Statutory Rules and Orders*, 1913, page 2403.

*And whereas we are now minded to make fresh provision for the Government of the said Colony*

*Now know ye that we do by these presents revoke the above recited Letters Patent of the 1st day of October 1880 and the 9th day of January 1913 but without prejudice to anything lawfully done thereunder and we do declare our will and pleasure to be as follows —*

1 There shall be a Governor and Commander in Chief in and over our Colony of Trinidad and Tobago (hereinafter referred to as the Colony) and appointments to the said office shall be by Commission under our Sign Manual and Signet

2 We do hereby authorise empower and command the said Governor and Commander in Chief (hereinafter called the Governor) to do and execute all things that belong to his said office according to the tenour of these our Letters Patent and of any Order or Orders in our Privy Council relating to the Colony and of such Commission as may be issued to him under our Sign Manual and Signet and according to such Instructions as may from time to time be given to him under our Sign Manual and Signet or by our Order in our Privy Council or by us through one of our Principal Secretaries of State and to such laws as are or shall hereafter be in force in the Colony

3 Every person appointed to fill the office of Governor shall with all due solemnity before entering on any of the duties of his office cause the Commission appointing him to be Governor to be read and published at the seat of Government in the presence of the Chief Justice or some other judge of the Supreme Court of the Colony and of such members of the Executive Council thereof as can conveniently attend which being done he shall then and there take before them the oath of allegiance in the form provided by an Act passed in the session holden in the 31st and 32nd years of the reign of Her Majesty Queen Victoria intituled An Act to amend the Law relating to Promissory Oaths <sup>(1)</sup> and likewise the usual oath for the due execution of the office of Governor and for the due and impartial administration of justice which oaths the said Chief Justice or judge is hereby required to administer

4 The Governor shall keep and use the Public Seal of the Colony for sealing all things whatsoever that shall pass the said Public Seal

5 There shall be an Executive Council for the Colony and the said Council shall consist of such persons as we shall direct by Instructions under our Sign Manual and Signet and all such persons shall hold their places in the Executive Council during our pleasure

6 On and after a date<sup>(2)</sup> to be fixed by the Governor by proclamation in the *Trinidad Royal Gazette* the Legislative Council of the Colony of Trinidad and Tobago shall cease to exist and in place

<sup>(1)</sup> 31 & 32 Vict. c. 72

<sup>(2)</sup> January 1 1925

thereof there shall be a Legislative Council constituted in such manner and consisting of the Governor and such persons as are directed by our Order in our Privy Council dated the 16th day of April, 1924,<sup>(1)</sup> and known as "The Trinidad and Tobago (Legislative Council) Order in Council, 1924," or by any Order in our Privy Council amending or substituted for the same, or by any Instructions under our Sign Manual and Signet.

7. The persons who shall from time to time compose the said Legislative Council shall have full power and authority, subject always to any conditions, provisoes, and limitations prescribed by any Order in Council or by any Instructions under our Sign Manual and Signet, to establish such ordinances, and to constitute such courts and officers, and to make such provisions and regulations for the proceedings in such courts, and for the administration of justice, as may be necessary for the peace, order, and good government of the Colony.

The Governor shall have a negative voice in the making and passing of all such ordinances :

Provided nevertheless, and we do hereby reserve to ourselves, our heirs and successors, full authority, through one of our principal Secretaries of State, to disallow any such ordinances or with the advice of our or their Privy Council to repeal, alter, or amend the same, or to make from time to time, with the advice of our or their Privy Council, all such laws as may to us or them appear necessary for the peace, order, and good government of the Colony.

Every such disallowance, repeal, alteration, and amendment shall take effect from the time when the same shall be promulgated in the Colony by the Governor.

Until repealed or revoked by any such Order in Council or by or in pursuance of any law or ordinance passed by the Legislative Council hereby constituted, all laws, ordinances, proclamations, regulations, or other enactments in force in the Colony at the date of the coming into operation of these our Letters Patent shall remain in force and continue to have full effect in the Colony.

8. When a bill passed by the Legislative Council is presented to the Governor for his assent, he shall, according to his discretion, but subject to any instruction addressed to him under our Sign Manual and Signet or through one of our Principal Secretaries of State, declare that he assents thereto, or refuses his assent to the same, or that he reserves the same for the signification of our pleasure.

9. No law shall take effect until either the Governor shall have assented thereto in our name and on our behalf, and shall have signed the same in token of such assent, or until we shall have given our assent thereto through one of our Principal Secretaries of State.

10 A bill reserved for the signification of our pleasure shall take effect so soon as we shall have given our assent to the same by Order in Council or through one of our Principal Secretaries of State, and the Governor shall have signified such assent by message to the Legislative Council or by proclamation provided that no such message or proclamation shall be issued after 2 years from the day on which the bill was presented to the Governor for his assent

11 In the making of any ordinances the Governor and the Legislative Council shall conform to and observe all rules regulations, and directions in that behalf contained in any Order by us in our Privy Council or in any Instructions under our Sign Manual and Signet

12 The Governor in our name and on our behalf may make and execute under the Public Seal of the Colony grants and dispositions of any lands which may lawfully be granted or disposed of by us, within the Colony provided that every such grant or disposition be made in conformity either with some law in force in the Colony, or with some instructions addressed to the Governor under our Sign Manual and Signet, or through one of our Principal Secretaries of State, or with some regulation in force in the Colony

13 The Governor may constitute and appoint all such judges, magistrates, justices of the peace, and other necessary officers and ministers, in the Colony, as may be lawfully constituted or appointed by us, all of whom shall hold their offices during our pleasure

14 The Governor may, upon sufficient cause to him appearing, dismiss any public officer not appointed by virtue of a warrant from us, whose pensionable emoluments do not exceed £100 a year in the case of an officer appointed to an office in the Colony before the date of the coming into operation of these our Letters Patent, or £150 a year in the case of an officer appointed to an office in the Colony on or after such date, provided that in every such case unless the officer has been convicted on a criminal charge the grounds of intended dismissal are definitely stated in writing, and communicated to the officer in order that he may have full opportunity of exculpating himself, and the matter is investigated by the Governor with the aid of the head of the time being of the department in which the officer is serving If such an officer has been convicted on a criminal charge, the Governor may call for the records of the trial and form his decision thereon, with the assistance, if necessary, of the officer who tried the case

The Governor may, upon sufficient cause to him appearing, also suspend from the exercise of his office any person holding any office within the Colony whether appointed by virtue of any commission or warrant from us or in our name or by any other mode of appointment Such suspension shall continue and have effect only until our pleasure therein shall be signified to the Governor

If the suspension is confirmed by one of our Principal Secretaries of State, the Governor shall forthwith cause the officer to be so informed, and thereupon his office shall become vacant. In proceeding to any such suspension, the Governor is strictly to observe the directions in that behalf given to him by our Instructions as aforesaid.

15. When any crime or offence has been committed within the Colony, or for which the offender may be tried therein, the Governor may, as he shall see occasion, in our name and on our behalf, grant a pardon to any accomplice in such crime or offence who shall give such information and evidence as shall lead to the conviction of the principal offender, or of any one of such offenders, if more than one; and further, may grant to any offender convicted of any crime or offence in any court, or before any judge, justice or magistrate, within the Colony, a pardon, either free or subject to lawful conditions, or any remission of the sentence passed on such offender, or any respite of the execution of such sentence, for such period as the Governor thinks fit, and may remit any fines, penalties, or forfeitures, due or accrued to us. Provided always, that the Governor shall in no case, except where the offence has been of a political nature unaccompanied by any other grave crime, make it a condition of any pardon or remission of sentence that the offender shall be banished from or shall absent himself or be removed from the Colony.

16. In the event of the Governor having occasion at any time to be temporarily absent for a short period from the seat of Government, or to leave the island of Trinidad for the purpose of visiting the island of Tobago or, in the exercise or discharge of any powers or duties conferred or imposed upon him by us, or through one of our Principal Secretaries of State, to visit any neighbouring colony or State, he may by an instrument under the Public Seal of the Colony appoint any person resident in the island of Trinidad to be his deputy during such temporary absence, and in that capacity to exercise, perform and execute for and on behalf of the Governor during such absence, but no longer, all such powers and authorities vested in the Governor as shall in and by such instrument be specified and limited, but no others. Every such deputy shall conform to and observe all such instructions as the Governor shall from time to time address to him for his guidance. Provided nevertheless that by the appointment of a deputy as aforesaid the power and authority of the Governor shall not be abridged, altered, or in any way affected otherwise than we may at any time hereafter think proper to direct.

17. The Governor during his passage by sea to or from any island included in his government, or when on a visit to a neighbouring colony or State as herein provided, shall not be considered absent from the Colony.

18 Whenever the office of Governor is vacant, or if the Governor become incapable or be absent from the Colony such person or persons as we may appoint under our Sign Manual and Signet, and in default of such appointment, or in the absence of all persons so appointed then the person for the time being lawfully discharging the functions of Colonial Secretary for the Colony shall, during our pleasure, administer the Government of the Colony, first taking the oaths hereinbefore directed to be taken by the Governor and in the manner herein prescribed, which being done, we do hereby authorise, empower, and command such administrator as aforesaid, to do and execute during our pleasure, all things that belong to the office of Governor and Commander-in-Chief, according to the tenour of these our Letters Patent, and of any Order by us in our Privy Council and according to our Instructions as aforesaid, and the laws of the Colony

19 And we do hereby require and command all our officers, civil and military, and all other the inhabitants of the Colony, to be obedient, aiding and assisting unto the Governor, or to such person or persons as may, from time to time, under the provisions of these our Letters Patent, administer the Government of the Colony

20 In the construction of these our Letters Patent, the term "the Governor," unless inconsistent with the context, shall include every person for the time being administering the Government of the Colony

21 And we do hereby reserve to ourselves, our heirs and successors full power and authority from time to time to revoke, alter, or amend these our Letters Patent as to us or them shall seem fit

22 And we do direct and enjoin that these our Letters Patent shall be published in the *Trinidad Royal Gazette* and shall come into operation on a day<sup>(1)</sup> to be fixed by the Governor by proclamation in the said Gazette

In witness whereof we have caused these our Letters to be made Patent

Witness ourself at Westminster the 6th day of June, in the 15th year of our reign

By warrant under the King's Sign Manual

SCHUSTER

### 3. Royal Instructions, 1924

GEORGE R I

*Instructions to our Governor and Commander-in-Chief in and over our Colony of Trinidad and Tobago, or other officer for the time being administering the Government of our said Colony*

(1) August 21, 1924

Whereas by certain Letters Patent under the Great Seal of our United Kingdom of Great Britain and Ireland, bearing even date herewith,<sup>(1)</sup> we have ordered and declared that there shall be a Governor and Commander-in-Chief (therein and hereinafter called "the Governor") in and over our Colony of Trinidad and Tobago (therein and hereinafter called "the Colony"): and whereas we have thereby authorised, empowered and commanded the Governor to do and execute all things that belong to his said office, according to the tenour of our said Letters Patent, and of any Order or Orders in our Privy Council relating to the Colony, and of such Commission as may be issued to him under our Sign Manual and Signet and according to such instructions as may from time to time be given to him under our Sign Manual and Signet, or by our Order in our Privy Council, or by us through one of our Principal Secretaries of State, and to such laws as are or shall hereafter be in force in the Colony:

And whereas His late Majesty King Edward VII did issue certain Instructions under his Sign Manual and Signet bearing date the 30th day of August, 1905, and whereas we did issue certain Additional Instructions bearing date the 5th day of February, 1923, amending the second and eleventh clauses of the said Instructions.

And whereas we are minded to issue fresh Instructions under our Sign Manual and Signet for the guidance of the Governor, or other officer administering the Government of the Colony:

Now therefore, as from the date of the coming into operation of the above recited Letters Patent bearing even date herewith, we do hereby revoke the aforesaid Instructions bearing date the 30th day of August, 1905, and Additional Instructions bearing date the 5th day of February, 1923, but without prejudice to anything lawfully done thereunder, and instead thereof we do hereby direct and enjoin and declare our will and pleasure, as follows:—

1. The Governor may, whenever he thinks fit, require any person in the public service of the Colony to take the oath of allegiance, in the form prescribed by the Act mentioned in the said recited Letters Patent, together with such other oath or oaths as may from time to time be prescribed by any laws in force in the Colony. The Governor is to administer such oaths or cause them to be administered by some public officer of the Colony.

2. The Executive Council of the Colony shall consist of the persons for the time being lawfully discharging the functions of the respective offices of Colonial Secretary, of Attorney-General, and of Treasurer of the Colony, and of such other persons as at the date of the coming into operation of these our Instructions are members of the said Council, or as the Governor, in pursuance of instructions from us through one of our Principal Secretaries of State, may from time to time appoint. The said members shall have seniority and

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(1) Page 605.



precedence as we may specially assign, and, in default thereof, first the above-mentioned officers in the order in which their offices are mentioned herein, and then other persons according to the priority of their respective appointments, or if appointed by the same instrument, according to the order in which they are named therein

3 Whenever any person appointed by the Governor, in pursuance of instructions from us, through one of our Principal Secretaries of State, shall, by writing under his hand, resign his seat in the Executive Council or shall die, or be suspended from the exercise of his functions as a member of the Executive Council, or be declared by the Governor by an instrument under the Public Seal to be incapable of exercising his functions as a member of the Council, or be absent from the Colony, or shall either permanently or temporarily become an *ex officio* member of the Council, the Governor may, by an instrument under the Public Seal, appoint some person to be provisionally a member of the Council in the place of the member so resigning or dying, or being suspended or declared incapable, or being absent, or becoming either permanently or temporarily an *ex officio* member

Such person shall forthwith cease to be a member of the Council if his appointment is disallowed by us, or if the member in whose place he was appointed shall be released from suspension, or as the case may be, shall be declared by the Governor capable of again discharging his functions in the Council, or shall return to the Colony, or shall cease to sit in the Council as an *ex officio* member

The Governor shall forthwith report every such provisional appointment to us through one of our Principal Secretaries of State, and every such appointment may be disallowed by us through one of our Principal Secretaries of State, or may be revoked by the Governor by any such instrument as aforesaid

4 The Governor shall forthwith communicate these our Instructions to the said Executive Council, and likewise all such others, from time to time, as he shall find convenient for our service to impart to them

5 The said Executive Council shall not proceed to the despatch of business unless duly summoned by authority of the Governor, nor unless two members at the least (exclusive of himself or of the member presiding) be present and assisting throughout the whole of the meetings at which any such business shall be despatched

6 The Governor, unless prevented by illness or other grave cause, shall attend and preside at the meetings of the Executive Council, and in his absence such member as the Governor may appoint, or in default thereof, or in the absence of such member, the senior member of the said Council actually present shall preside

7 Full and exact journals or minutes shall be kept of all the proceedings of the Executive Council and at each meeting of the said Council the minutes of the last preceding meeting shall be

confirmed or amended, as the case may require, before proceeding to the despatch of any other business. Twice in each year a full transcript of all the said minutes for the preceding half year shall be transmitted to us through one of our Principal Secretaries of State.

8. In the execution of the powers and authorities granted to the Governor by the said recited Letters Patent, or by any other Letters Patent adding to, amending, or substituted for the same, or by any Order or Orders in our Privy Council relating to the Colony, he shall in all cases consult with the Executive Council, excepting only in cases which may be of such a nature that, in his judgment, our service would sustain material prejudice by consulting the said Council thereupon, or when the matters to be decided shall be too unimportant to require their advice, or too urgent to admit of their advice being given by the time within which it may be necessary for him to act in respect of any such matters. In all such urgent cases he shall, at the earliest practical period, communicate to the Executive Council the measures which he may so have adopted, with the reasons thereof.

9. The Governor shall alone be entitled to submit questions to the Executive Council for their advice or decision; but if the Governor decline to submit any question to the said Council when requested in writing by any member so to do, it shall be competent to such member to require that there be recorded upon the minutes his written application, together with the answer returned by the Governor to the same.

10. In the exercise of the powers and authorities granted to the Governor by the said recited Letters Patent, or any other Letters Patent adding to, amending, or substituted for the same or by any Order or Orders in our Privy Council relating to the Colony, he may act in opposition to the advice given to him by the members of the Executive Council, if he shall in any case deem it right to do so; but in any such case he shall fully report the matter to us, by the first convenient opportunity, with the grounds and reasons of his action. In every such case it shall be competent to any member of the Council to require that there be recorded at length on the minutes the grounds of any advice or opinion he may give upon the question.

11. In the making of laws within the Colony the Governor and the Legislative Council shall observe, as far as practicable, the following rules:—

(1) All laws shall be styled "ordinances," and the enacting words shall be "Enacted by the Governor of Trinidad and Tobago with the advice and consent of the Legislative Council thereof."

(2) All ordinances shall be distinguished by titles, and shall be divided into successive clauses or paragraphs consecutively numbered, and to every such clause there shall be annexed in the margin a short summary of its contents. The ordinances of each year shall

be distinguished by consecutive numbers, commencing in each year with the number one. Except in the case of bills reserved for the signification of our pleasure, all bills passed by the Legislative Council in any one year shall, if assented to by the Governor, be assented to by him in that year, and shall be dated as of the day on which the assent of the Governor is given and shall be numbered as of the year in which they are passed. Bills not so assented to by the Governor, but reserved by him for the signification of our pleasure, shall be dated as of the day and numbered as of the year on and in which they are brought into operation.

(3) Each different matter shall be provided for by a different ordinance without intermixing into one and the same ordinance such things as have no proper relation to each other, and no clause is to be inserted in or annexed to any ordinance which shall be foreign to what the title of such ordinance imports, and no perpetual clause shall be part of any temporary ordinance.

12 The Governor shall not, except in the cases hereunder mentioned, assent in our name to any bill of any of the following classes —

(1) Any bill for the divorce of persons joined together in holy matrimony,

(2) Any bill whereby any grant of land or money, or other donation or gratuity may be made to himself,

(3) Any bill affecting the currency of the Colony or relating to the issue of bank notes,

(4) Any bill establishing any banking association, or amending or altering the constitution, powers, or privileges of any banking association,

(5) Any bill imposing differential duties,

(6) Any bill the provisions of which shall appear inconsistent with obligations imposed upon us by treaty.

(7) Any bill interfering with the discipline or control of our forces by land, sea or air,

(8) Any bill of an extraordinary nature and importance, whereby our prerogative or the rights and property of our subjects not residing in the Colony, or the trade and shipping of our United Kingdom and its dependencies may be prejudiced,

(9) Any bill whereby persons not of European birth or descent may be subjected or made liable to any disabilities or restrictions to which persons of European birth or descent are not also subjected or made liable;

(10) Any bill containing provisions to which our assent has once been refused or which have been disallowed by us,

unless the Governor shall previously have obtained our instructions upon such bill through one of our Principal Secretaries of State, or unless such bill shall contain a clause suspending the operation of such bill until the signification of our pleasure thereupon, or unless the Governor shall have satisfied himself that an urgent necessity exists requiring that such bill be brought into immediate operation, in which case he is authorised to assent in our name to such bill, unless the same shall be repugnant to the law of England, or inconsistent with any obligations imposed on us by treaty. But he is to transmit to us, by the earliest opportunity, the bill so assented to, together with his reasons for assenting thereto.

13. Every bill intended to affect or benefit some particular person, association, or corporate body, shall contain a section saving the rights of us, our heirs and successors, all bodies politic and corporate, and all others, except such as are mentioned in the bill and those claiming by, from, or under them. No such bill, not being a Government measure, shall be introduced into the Legislative Council until due notice has been given by not less than three successive publications of the bill in the *Trinidad Royal Gazette*; and the Governor shall not assent thereto in our name unless it has been so published. A certificate under the hand of the Governor signifying that such publication has been made shall be transmitted to us with the bill.

14. When any ordinance shall have been passed, or when any bill shall have been reserved for the signification of our pleasure, the Governor shall forthwith lay it before us for our approval, disallowance, or other direction thereupon, and shall transmit to us, through one of our Principal Secretaries of State, a transcript in duplicate of the same, with the marginal summary thereof, duly authenticated under the Public Seal of the Colony, and by his own signature. Such transcript shall be accompanied by such explanatory observations as may be required to exhibit the reasons and occasion for passing such ordinance or bill.

15. In the month of January, or at the earliest practicable period at the commencement of each year, the Governor shall cause a complete collection to be published, for general information, of all ordinances enacted during the preceding year.

16. Before disposing of any vacant or waste lands to us belonging, the Governor shall cause the same to be surveyed, and such reservations to be made thereout as he may think necessary for roads or other public purposes. The Governor shall not, directly or indirectly, purchase for himself any of such lands without our special permission given through one of our Principal Secretaries of State.

17. All commissions to be granted by the Governor to any person or persons exercising any office or employment shall be granted during pleasure only; and whenever the Governor shall appoint to

any vacant office or employment, of which the initial emoluments exceed £150 a year, any person not by us specially directed to be appointed thereto, he shall, at the same time, expressly apprise such person that such appointment is to be considered only as temporary and provisional until our allowance or disallowance thereof has been signified

18 Whenever any offender shall have been condemned by the sentence of any court in the Colony to suffer death, the Governor shall call upon the judge who presided at the trial to make to him a written report of the case of such offender, and shall cause such report to be taken into consideration at the first meeting of the Executive Council which may be conveniently held thereafter, and he may cause the said judge to be specially summoned to attend at such meeting and to produce his notes thereat. The Governor shall not pardon nor reprieve any such offender unless it shall appear to him expedient so to do upon receiving the advice of the said Executive Council thereon, but in all such cases he is to decide either to extend or to withhold a pardon or reprieve, according to his own deliberate judgment, whether the members of the Executive Council concur therein or otherwise, entering, nevertheless, on the minutes of the said Executive Council a minute of his reasons at length in case he should decide any such question in opposition to the judgment of the majority of the members thereof

19 Before suspending from the exercise of his office any public officer whose annual pensionable emoluments exceed £100 in the case of an officer appointed to an office in the Colony before the date of the coming into operation of our above recited Letters Patent bearing even date herewith, or £150 in the case of an officer appointed to an office in the Colony on or after such date the Governor shall signify to such officer by a statement in writing, the grounds of the intended suspension and shall call upon him to state in writing the grounds upon which he desires to exculpate himself, and if the officer does not furnish such a statement within the time fixed by the Governor, or fails to exculpate himself to the satisfaction of the Governor, the Governor shall appoint a committee of the Executive Council to investigate the charges made and to make a full report to the Executive Council. The Governor shall forthwith cause such report to be considered by the Council, and shall cause to be recorded in the minutes whether the Council, or the majority thereof, does or does not assent to the suspension, and if the Governor thereupon proceeds to such suspension he shall transmit the report of the committee and the evidence taken by it, together with the minutes of the proceedings of the Council, to us through one of our Principal Secretaries of State at the earliest opportunity. But if in any case the interests of our service shall appear to the Governor to demand that a person shall cease to exercise the powers and functions of his

office instantly, or before there shall be time to take the proceedings hereinbefore directed, he shall then interdict such person from the exercise of the powers and functions of his office.

20. The Governor shall punctually forward to us, from year to year, through one of our Principal Secretaries of State, the annual book of returns commonly called "the blue book," relating to the revenue and expenditure, defence, public works, legislation, civil establishments, pensions, population, schools, course of exchange, imports and exports, agricultural produce, manufactures, and other matters in the said blue book more particularly specified, with reference to the state and condition of the Colony.

21. Except in the case provided for by our above-recited Letters Patent, the Governor shall not upon any pretence whatever quit the Colony without having first obtained leave from us for so doing under our Sign Manual and Signet, or through one of our Principal Secretaries of State.

22. In these our Instructions the term "the Governor" shall include every person for the time being administering the Government of the Colony.

Given at our Court at Saint James's, this 6th day of June, 1924, in the 15th year of our reign.

## UGANDA PROTECTORATE

1. Order in Council providing for the Government.—  
London, August 11, 1902.

Text in *State Papers*, Vol. XCV, page 636.

### *Amendments*

#### ORDERS IN COUNCIL :

London, March 4, 1911 .. .. Text in *State Papers*, Vol.  
CVI, page 806.

London, January 17, 1912 .. .. Text in *State Papers*, Vol.  
CV, page 130.

London, May 17, 1920 .. .. Text in *State Papers*, Vol.  
CXXIII, page 105.

2. Order in Council constituting the Office of Governor and Commander-in-Chief.—London, May 17, 1920.

Text in *State Papers*, Vol. CXXIII, page 105.

*Amendment*

ORDER IN COUNCIL

London, April 30, 1926

CXIII, page 148

Text in *State Papers*, Vol

## 3. Royal Instructions to the Governor and Commander-in-Chief—St James's, June 5, 1920

*Amendments*

ADDITIONAL INSTRUCTIONS

St James's, November 24, 1925

St James's, November 3, 1930

. . . . .

## 1. Order in Council, 1902 (as amended 1911, 1912 and 1920)

\* \* \*

15 There shall be a court of record styled "His Majesty's High Court of Uganda" (in this Order referred to as "the High Court"), with full jurisdiction, civil and criminal, over all persons and over all matters in Uganda

(2) Subject to the other provisions of this Order, such civil and criminal jurisdiction shall, so far as circumstances admit, be exercised in conformity with the Civil Procedure, Criminal Procedure and Penal Codes of India in force at the date of the commencement of this Order and subject thereto and so far as the same shall not extend or apply shall be exercised in conformity with the substance of the common law and doctrines of equity and the statutes of general application in force in England on the 11th day of August 1902, and with the powers vested in and according to the procedure and practice observed by and before *courts of justice and justices of the peace in England according to their respective jurisdiction and authorities at that date*, save in so far as the said Civil Procedure and Penal Codes of India and the said common law doctrines of equity and statutes of general application and the said powers, procedure and practice may at any time before the commencement of this Order have been, or hereafter may be, modified, amended or replaced by other provision in lieu thereof by or under the authority of any Order of His Majesty in Council or by any ordinance or ordinances passed in and for the Protectorate. Provided always that the said common law doctrines of equity and statutes of general application shall be in force in the Protectorate so far only as the circumstances of the Protectorate and its inhabitants and the limits of His Majesty's jurisdiction permit and subject to such qualifications as local circumstances render necessary

(3) The High Court shall sit at such place or places as the Commissioner may appoint.

(4) The High Court shall have a seal bearing the style of the Court and a device approved by the Secretary of State; but until such a seal is provided, a stamp bearing the words "High Court of Uganda" may be used instead thereof.

16. (1) The High Court shall be a court of admiralty, and shall exercise admiralty jurisdiction in all matters arising upon any lake or other navigable inland waters or otherwise relating to ships and shipping.

(2) The following enactments of "The Colonial Courts of Admiralty Act, 1890,"<sup>(1)</sup> that is to say, section 2, sub-sections (2) to (4), sections 5 and 6, section 16, sub-section (3), shall apply to the High Court as if in the said sections the said Court were mentioned in lieu of a Colonial Court of Admiralty, and the Protectorate were referred to in lieu of a British possession.

18. (1) Courts subordinate to the High Court and courts of special jurisdiction may be constituted by or under the provisions of any ordinance as occasion requires.

(2) Provision may be made by ordinance for the hearing and determining of appeals from any such court by the High Court or otherwise.

20. In all cases, civil and criminal, to which natives are parties, every court (a) shall be guided by native law so far as it is applicable and is not repugnant to justice and morality or inconsistent with any Order in Council or ordinance, or any regulation or rule, made under any Order in Council or ordinance, and (b) shall decide all such cases according to substantial justice without undue regard to technicalities of procedure and without undue delay.

21. If any sentence of death is pronounced by the High Court, a copy of the evidence shall be transmitted to the Commissioner, and the sentence shall not be carried into effect until confirmed by him.

\* \* \*

3. Royal Instructions. 1920 (as amended 1925 and 1930).

\* \* \*

4. The Executive Council of the Protectorate shall consist of the persons for the time being lawfully discharging the functions of Chief Secretary, of Attorney-General, of Treasurer, of Director of

<sup>(1)</sup> *Stat. Papers*, Vol. LXXXII, page 672.



Medical and Sanitary Services, of Director of Agriculture, of Director of Education, and of Provincial Commissioner for the Province of Buganda, who shall be styled "*ex officio* members" of the Executive Council, and such other persons holding office in the public service of the Protectorate as the Governor, in pursuance of instructions from us through one of our Principal Secretaries of State, may from time to time appoint by an instrument under the Public Seal of the Protectorate, who shall be styled "official members" of the Executive Council, and further of such persons (if any) not holding office in the public service of the Protectorate as the Governor, in pursuance of instructions from us through one of our Principal Secretaries of State may from time to time appoint by an instrument under the Public Seal of the Protectorate, who shall be styled "unofficial members" of the Executive Council

Whenever upon any special occasion the Governor desires to obtain the advice of any person within the Protectorate relating to affairs therein, he may, by an instrument under the Public Seal of the Protectorate, summon for such special occasion any such person as an extraordinary member of the Executive Council

\* \* \*

15 The Legislative Council of the Protectorate shall consist of the Governor the persons for the time being lawfully discharging the functions of Chief Secretary of Attorney-General, of Treasurer, of Director of Medical and Sanitary Services, of Director of Agriculture, and of Director of Education, who shall be styled '*ex officio* members' of the Legislative Council, and such other persons holding office in the Protectorate as the Governor, in pursuance of instructions from us through one of our Principal Secretaries of State, may from time to time appoint under the Public Seal of the Protectorate, who shall be styled "official members" of the Legislative Council and further of such persons not holding office in the Protectorate as the Governor in pursuance of any instructions from us, through one of our Principal Secretaries of State may from time to time appoint by an instrument under the Public Seal of the Protectorate, who shall be styled "unofficial members" of the Legislative Council

\* \* \*

## WEST AFRICA

1. Order in Council constituting a Court of Appeal.—  
London, November 1, 1928.

Text in *State Papers*, Vol. CXXVIII, page 142.

*Amendments*

ORDERS IN COUNCIL :

London, January 20, 1930 .. Text in *State Papers*, Vol.  
CXXXII, page 2.

London, February 26, 1934 .. Text in *Statutory Rules and  
Orders*, 1934, Vol. I, page 651.

London, May 4, 1935 .. Text in *Statutory Rules and  
Orders*, 1935, page 484.

London, December 20, 1935 .. Text in *Statutory Rules and  
Orders*, 1935, page 487.

2. Order in Council providing for Appeals to His Majesty  
in Council.—London, January 20, 1930.

Text in *State Papers*, Vol. CXXXII, page 3.

*Amendments*

ORDERS IN COUNCIL :

London, February 26, 1934 .. Text in *Statutory Rules and  
Orders*, 1934, Vol. II, page 783.

London, May 4, 1935 .. Text in *Statutory Rules and  
Orders*, 1935, page 180.

.. ..

- I. Court of Appeal Order in Council, 1928 (as amended  
1930, 1934 and 1935).

\* \* \*

Whereas it is expedient to make further and other provision than that heretofore in force for the hearing and determining of appeals from His Majesty's Supreme Court of Nigeria and from His Majesty's Supreme Court of the Gold Coast and from other courts of the Gold Coast, by which term is meant the Gold Coast Colony, Ashanti, the Northern Territories of the Gold Coast and Togoland under British Mandate as though they were a single territory, and from His Majesty's Supreme Courts of the Colonies of Sierra Leone and the Gambia and from His Majesty's High Court of the Protectorate of Nigeria and from His Majesty's courts in the territories of West Africa known as the Protectorates of Sierra Leone and the Gambia, wherein by treaty, grant, usage, sufferance, or other lawful means, His Majesty has power and jurisdiction :

*And whereas it is expedient that a court should be established as hereinafter provided for the hearing and determining of such appeals as aforesaid .*

*Now, therefore, His Majesty, by virtue and in exercise of the powers in this behalf by "The British Settlements Act, 1887,"<sup>(1)</sup> and "The Foreign Jurisdiction Act, 1890,"<sup>(2)</sup> or otherwise, in His Majesty vested, is pleased, by and with the advice of his Privy Council, to order, and it is hereby ordered, as follows —*

\* \* \*

3 There shall be a Court of Appeal (in this Order referred to as "the Court of Appeal" for the courts of the Colonies and other territories in West Africa mentioned in the preamble to this Order, which shall be a superior court of record, and shall be called "the West African Court of Appeal"

\* \* \*

5 The judges of the Court of Appeal shall be the judges of the Supreme Court of Nigeria and of the Supreme Court of the Gold Coast and the judges of the Supreme Courts of the Colonies to which this Order applies, and the judges of the High Court of the Protectorate of Nigeria

\* \* \*

8 The Court may, in any case in which it appears to it to be expedient, call in the aid of one or more assessors specially qualified, and hear such cases wholly or partially with the assistance of such assessors. The remuneration (if any) to be paid to such assessors shall be determined by the Court

9 (1) The Court of Appeal shall be duly constituted if it consists of an uneven number, not being less than three, of the judges of the Court of Appeal. Provided always that—

(a) In civil cases arising in the Colony of the Gold Coast or in Ashanti or in the territories known as the Northern Territories of the Gold Coast or in the British Sphere of Togoland, where the parties to the appeal consent, the Court of Appeal shall be deemed to be duly constituted if it consists of not less than two judges, and

(b) Provision may be made by rules of court for the hearing and determining of specified classes of cases by two judges of the Court of Appeal

(2) In all appeals, causes or matters brought before the Court of Appeal the opinion of the majority, if any, shall, in the event of the judges disagreeing, be deemed and taken to be the judgment

(1) *State Papers* Vol LXXVIII, page 824

(2) *Ibid*, Vol LXXXII, page 656

of the Court of Appeal. If the court consists of two judges and they disagree the judgment of the court below shall be deemed and taken to be the judgment of the court.

9A. (1) The powers conferred upon the Court of Appeal in respect of criminal appeal by any laws in force in any of the Colonies and territories to which this Order applies may be exercised by a single judge of the Court of Appeal in any matters not involving the decision of the appeal in the same manner as they may be exercised by the Court of Appeal, and subject to the same provisions, but if such judge refuses an application on the part of an appellant to exercise any such power in his favour, the appellant shall be entitled to have his application determined by the Court of Appeal as duly constituted under this Order.

(2) A single judge of the Court of Appeal shall have power in respect of any civil appeal pending before the Court of Appeal to make any order and give any directions incidental thereto not involving the decision of the appeal, provided that any order or direction so made or given may be varied, discharged or reversed by the Court of Appeal.

10. A judge of the Court of Appeal shall not sit as a judge—

(a) on the hearing of an appeal from any judgment or order made by himself or made by any court, if he was present and acting as a member of the court at the time when the decision appealed from was made, or at the argument of the case decided, or

(b) on the hearing of an appeal against a conviction or sentence if he was the judge by or before whom the appellant was convicted.

11. (1) The Court of Appeal shall have jurisdiction and power to hear and determine appeals from any of the courts of the Colonies and territories to which this Order applies (including reserved questions of law and appeals against convictions by or in, and sentences imposed by, any of the said courts) wherever under any law for the time being in force in any of the said Colonies or territories respectively an appeal lies to the Court of Appeal, subject however to the provisions of this Order and to any law for the time being so in force, and to rules of court made under this Order.

(2) The process of the Court of Appeal shall run throughout the Colonies and territories to which this Order applies, and any judgment, decree, or order of the Court of Appeal shall have full force and effect in every such Colony and territory, and shall be executed and enforced in like manner as if it were an original judgment, decree or order of the court from which the appeal is brought, and for all purposes of and incidental to the hearing and determination of any appeal within its jurisdiction the Court of Appeal shall have all the power, authority and jurisdiction vested in the court from which the appeal is brought.

(3) Without prejudice to the provisions of the foregoing subsections of this section, the Court of Appeal shall in relation to appeals in criminal causes or matters from any of the courts of the Colonies and territories to which this Order applies and in relation to convictions by or in, and sentences imposed by, any of the said courts, have all the power, authority and jurisdiction which may be vested in the Court of Appeal under any law for the time being in force in any of the said Colonies or territories respectively

(4) In the hearing of an appeal from any Colony or territory, the law to be applied shall be the law in operation in that Colony or territory

\* \* \*

## 2 Appeal to Privy Council Order in Council, 1930 (as amended 1935).

\* \* \*

*Whereas, by an Order in Council bearing date the 1st day of November, 1928,<sup>(1)</sup> and known as "The West African Court of Appeal Order in Council 1928" as amended by "The West African Court of Appeal (Amendment) Order in Council, 1930,"<sup>(2)</sup> "The West African Court of Appeal (Further Amendment) Order in Council, 1934,"<sup>(3)</sup> and "The West African Court of Appeal (Further Amendment) Order in Council, 1935",<sup>(4)</sup> provision has been made for the establishment of a Court called "the West African Court of Appeal" for the hearing and determining of appeals from the Colonies of Sierra Leone and the Gambia, the Protectorates of Sierra Leone and the Gambia, and from the Gold Coast, by which term is meant the Gold Coast Colony, Ashanti, the Northern Territories of the Gold Coast and Togoland under British Mandate as though they were a single territory<sup>(5)</sup>*

*And whereas it is expedient that further provision should be made for regulating appeals from the West African Court of Appeal to His Majesty in Council*

*It is hereby ordered, by the King's most Excellent Majesty, by virtue and in exercise of all the powers in that behalf in His Majesty vested, and by and with the advice of his Privy Council, as follows —*

\* \* \*

<sup>(1)</sup> Page 621

<sup>(2)</sup> The amending Order in Council of 1934 provided that the Order of 1930 should have effect as if the Colony and Protectorate of Nigeria were included in the Colonies and other territories mentioned in the preamble to the latter Order

3. Subject to the provisions of this Order, an appeal shall lie—

(a) As of right, from any final judgment of the Court, where the matter in dispute on the appeal amounts to or is of the value of £500 sterling or upwards, or where the appeal involves directly or indirectly some claim or question to or respecting property or some civil right amounting to or of the said value or upwards; and

(b) at the discretion of the Court, from any other judgment of the Court, whether final or interlocutory, if, in the opinion of the Court, the question involved in the appeal is one which, by reason of its great general or public importance or otherwise, ought to be submitted to His Majesty in Council for decision.

4. Where in any action or other proceeding no final judgment can be duly given in consequence of a difference of opinion between the judges, the final judgment may be entered *pro forma* on the application of any party to such action or other proceeding according to the opinion of the senior member of the Court or in his absence of the member of the Court next in seniority, but such judgment shall only be deemed final for purposes of an appeal therefrom and not for any other purpose.

5. Applications to the Court for leave to appeal shall be made by motion or petition within 21 days from the date of the judgment to be appealed from, and the applicant shall give the opposite party notice of his intended application.

6. Leave to appeal under article 3 shall only be granted by the Court in the first instance—

(a) Upon condition of the appellant, within a period to be fixed by the Court, but not exceeding 3 months from the date of the hearing of the application for leave to appeal, entering into good and sufficient security, to the satisfaction of the Court, in a sum not exceeding £500 for the due prosecution of the appeal, and the payment of all such costs as may become payable to the respondent in the event of the appellant not obtaining an order granting him final leave to appeal, or of the appeal being dismissed for non-prosecution, or of His Majesty in Council ordering the appellant to pay the respondent's costs of the appeal (as the case may be); and

(b) upon such other conditions (if any) as to the time or times within which the appellant shall take the necessary steps for the purpose of procuring the preparation of the record and the dispatch thereof to England as the Court, having regard to all the circumstances of the case, may think it reasonable to impose.

7. A single judge of the Court shall have power and jurisdiction to hear and determine any application to the Court for leave to appeal under article 3 (a), and generally in respect of any appeal pending before His Majesty in Council to make such other order and to give such other directions as he shall consider the interests

of justice or the circumstances of the case to require, provided always that any order or directions so made or so given by a single judge as aforesaid may be varied, discharged or reversed by the Court

8 Where the judgment appealed from requires the appellant to pay money or perform a duty, the Court shall have power, when granting leave to appeal, either to direct that the said judgment shall be carried into execution or that the execution thereof shall be suspended pending the appeal, as to the Court shall seem just, and in case the Court shall direct the said judgment to be carried into execution, the person in whose favour it was given shall, before the execution thereof, enter into good and sufficient security, to the satisfaction of the Court, for the due performance of such Order as His Majesty in Council shall think fit to make thereon

\* \* \*

19 An appellant who has obtained an order granting him conditional leave to appeal may at any time prior to the making of an order granting him final leave to appeal withdraw his appeal on such terms as to costs and otherwise as the Court may direct.

20 Where an appellant, having obtained an order granting him conditional leave to appeal, and having complied with the conditions imposed on him by such order, fails thereafter to apply with due diligence to the Court for an order granting him final leave to appeal, the Court may, on an application in that behalf made by the respondent, rescind the order granting conditional leave to appeal, notwithstanding the appellant's compliance with the conditions imposed by such an order, and may give such directions as to the costs of the appeal and security entered into by the appellant as the Court shall think fit, or make such further or other order in the premises as, in the opinion of the Court, the justice of the case requires

21 On an application for final leave to appeal, the Court may enquire whether notice or sufficient notice of the application has been given by the appellant to all parties concerned and, if not satisfied as to the notices given, may defer the granting of the final leave to appeal, or may give such other directions in the matter as, in the opinion of the Court, the justice of the case requires

22 An appellant who has obtained final leave to appeal shall prosecute his appeal in accordance with the rules for the time being regulating the general practice and procedure in appeals to His Majesty in Council

23 Where an appellant, having obtained final leave to appeal, desires, prior to the dispatch of the record to England, to withdraw his appeal, the Court may, upon an application in that behalf made by the appellant, grant him a certificate to the effect that the appeal

has been withdrawn, and the appeal shall thereupon be deemed, as from the date of such certificate, to stand dismissed without express Order of His Majesty in Council, and the costs of the appeal and the security entered into by the appellant shall be dealt with in such manner as the Court may think fit to direct.

24. Where an appellant, having obtained final leave to appeal, fails to show due diligence in taking all necessary steps for the purpose of procuring the dispatch of the record to England, the respondent may, after giving the appellant due notice of his intended application, apply to the Court for a certificate that the appeal has not been effectually prosecuted by the appellant, and if the Court sees fit to grant such a certificate the appeal shall be deemed, as from the date of such certificate, to stand dismissed for non-prosecution without express Order of His Majesty in Council, and the costs of the appeal and the security entered into by the appellant shall be dealt with in such manner as the Court may think fit to direct.

25. Where at any time between order granting final leave to appeal and the dispatch of the record to England, the record becomes defective by reason of the death, or change of status, of a party to the appeal, the Court may, notwithstanding the order granting final leave to appeal, on an application in that behalf made by any person interested, grant a certificate showing who, in the opinion of the Court, is the proper person to be substituted or entered on the record in place of, or in addition to, the party who has died, or undergone a change of status, and the name of such person shall thereupon be deemed to be so substituted or entered on the record as aforesaid without express Order of His Majesty in Council.

26. Where the record subsequently to its dispatch to England becomes defective by reason of the death or change of status of a party to the appeal, the Court shall, upon an application in that behalf made by any person interested, cause a certificate to be transmitted to the Registrar of the Privy Council showing who, in the opinion of the Court, is the proper person to be substituted, or entered on the record, in place of, or in addition to, the party who has died or undergone a change of status.

\* \* \*

29. Where the Judicial Committee directs a party to bear the costs of an appeal incurred in any of the said territories such costs shall be taxed by the proper officer of the Court in accordance with the rules for the time being regulating taxation in the Court.

30. The Court shall conform with, and execute, any Order which His Majesty in Council may think fit to make on an appeal from a judgment of the Court in like manner as any original judgment of the Court should or might have been executed.



31 Nothing in this Order contained shall be deemed to interfere with the right of His Majesty upon the humble petition of any person aggrieved by any judgment of the Court to admit his appeal therefrom upon such conditions as His Majesty in Council shall think fit to impose

\* \* \*

## WESTERN PACIFIC

- 1 Order in Council providing for the Exercise of Jurisdiction in certain Islands and Places—Windsor, March 15, 1893 Text in *State Papers* Vol LXXV page 103

### *Amendments*

#### ORDERS IN COUNCIL

- |                            |   |
|----------------------------|---|
| London July 6 1907         | Text in <i>Statutory Rules and Orders</i> 1907 page 202 |
| Balmoral September 26 1908 | Text in <i>State Papers</i> Vol CI page 101             |
| London April 22 1910       | Text in <i>State Papers</i> Vol CIII page 156           |

- 2 Order in Council providing for the Exercise of Probate Jurisdiction in the Solomon Islands and Gilbert and Ellice Islands Protectorate and Ocean Island—Windsor January 21 1914 Text in *State Papers* Vol CVII page 33
- 3 Order in Council providing for the Surrender to Foreign States of Fugitive Criminals—Windsor January 21, 1914 Text in *State Papers* Vol CVII page 23

### *Amendment*

#### ORDER IN COUNCIL

- |                             |   |
|-----------------------------|---|
| Sandringham February 7 1933 | Text in <i>Statutory Rules and Orders</i> 1933 page 840 |
|-----------------------------|---|

- 4 Order in Council annexing the Gilbert and Ellice Islands and providing for the Government thereof—London November 10, 1915 Text in *State Papers* Vol CIX page 332
- 5 Constitution of the Kingdom of Tonga—November 4 1875 (as amended to August 16, 1933)

Text in *State Papers* Vol CXXV page 912

See also NEW HEBRIDES

# I. Order in Council, 1893 (as amended 1907, 1908 and 1910).

*At the Court at Windsor, the 15th day of March, 1893.*

PRESENT: THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL.

*Whereas by the 2nd and 6th sections of "The British Settlements Act, 1887,"<sup>(1)</sup> it is enacted as follows:—*

[Quotation.]

*And whereas there are in the Pacific Ocean certain islands and places which are, or may hereafter become, British settlements within the meaning of the said Act ;*

*And whereas there are also in the Pacific Ocean certain islands or places which are, or may hereafter come, under the protection of Her Majesty ;*

*And whereas by treaty, grant, usage, sufferance, or other lawful means Her Majesty has, or may have, power and jurisdiction in the said last-mentioned islands and places ;*

*And whereas by "The Pacific Islanders Protection Act, 1872,"<sup>(2)</sup> provision is made for the prevention and punishment of criminal outrages upon natives of islands in the Pacific Ocean, not being in Her Majesty's dominions nor within the jurisdiction of any civilised Power ;*

*And whereas by the 6th and 7th section of "The Pacific Islanders Protection Act, 1875,"<sup>(3)</sup> it is enacted as follows :—*

[Quotation.]

*And whereas by "The Foreign Jurisdiction Act, 1890,"<sup>(4)</sup> and otherwise, Her Majesty has jurisdiction in the aforesaid islands and places not being within Her Majesty's dominions, nor within the jurisdiction of any civilised Power ;*

*And whereas by the 1st, 2nd and 5th sections of "The Foreign Jurisdiction Act, 1890," it is enacted as follows :—*

[Quotation.]

*And whereas Her Majesty hath power by Order in Council to make laws for the Colony of Fiji ;*

*And whereas the following Orders in Council have been made under the powers by "The Pacific Islanders Protection Act, 1875," or otherwise in Her Majesty vested, that is to say :*

*"The Western Pacific Orders in Council" of 1877<sup>(5)</sup> and 1879<sup>(6)</sup> ;*

(1) *State Papers*, Vol. LXXVIII, page 824.

(2) *Ibid.*, Vol. LXII, page 1201.

(3) *Ibid.*, Vol. LXVI, page 234.

(4) *Ibid.*, Vol. LXXXII, page 656.

(5) *Ibid.*, Vol. LXVIII, page 325.

(6) *Ibid.*, Vol. LXX, page 277.

"*The Western Pacific Order in Council of 1880*"<sup>(1)</sup>.

And whereas it is expedient to amend and consolidate the said Orders in Council, and to make further provisions for the purposes in the recited Acts mentioned

Now, therefore, Her Majesty, by virtue and in exercise of the powers in this behalf, by "*The British Settlements Act, 1887*," "*The Pacific Islanders Protection Acts*," and "*The Foreign Jurisdiction Act, 1890*," or otherwise in Her Majesty vested, is pleased, by and with the advice of her Privy Council, to order, and it is hereby ordered, as follows —

\* \* \*

### PART I — *Interpretation and Application*

\* \* \*

4 The limits of this Order shall be the Pacific Ocean and the islands and places therein, including—

(a) Islands and places which are for the time being British settlements,

(b) Islands and places which are for the time being under the protection of Her Majesty,

(c) Islands and places which are for the time being under no civilised Government,

but exclusive (except as in this Order expressly provided in relation to any particular matter) of—

(1) Any place within any part of Her Majesty's dominions or the territorial waters thereof which is for the time being within the jurisdiction of the Legislature of any British possession

(2) Any place for the time being within the jurisdiction or protectorate of any civilised Power

5 In islands and places which are not British settlements, or under the protection of Her Majesty, jurisdiction under this Order shall be exercised (except only as in this Order otherwise expressly provided) only over Her Majesty's subjects, and any foreigners or natives, in so far as by reason of being, or having been, on board a British ship or otherwise they have come under a duty of allegiance to Her Majesty, and their property and personal and proprietary rights and obligations

6 Until otherwise directed by a Secretary of State as hereinafter provided, jurisdiction under this Order shall be exercised only in relation to the following parts of the limits of this Order, that is to say—

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(1) *State Papers*, Vol LXXI, page 294

(1) The groups of islands with the dependencies and territorial waters thereof known as—

The Friendly Islands.

The Navigators' Islands.

The Union Islands.

The Phoenix Islands.

The Ellice Islands.

The Gilbert Islands.

The Solomon Islands, so far as they are not within the jurisdiction of the German Empire.

The Santa Cruz Islands.

(2) Any seas, islands, and places which are not excluded by the 4th article of this Order, and are situate in the Western Pacific Ocean, that is to say, within the following limits—

North, from 140° east longitude by the parallel 12° north latitude to 160° west longitude, thence south to the equator, and thence east to 149° 30' west longitude.

East by the meridian of 149° 30' west longitude.

South by the parallel 30° south latitude.

West by the meridian 140° east longitude.

Provided that the Secretary of State from time to time, by any instructions <sup>(1)</sup> given to the High Commissioner and published as the Secretary of State thinks fit, may direct that jurisdiction under this Order may be exercised in relation to any parts of the limits of this Order not herein specified, or that any part of the limits of this Order shall, until otherwise directed, be excepted from the application of this Order.

Provided also that, in relation to the Navigators' Islands, this Order is subject to the provisions of the Final Act of the Conference on the affairs of Samoa, signed in Berlin, the 14th June, 1889.<sup>(2)</sup>

## PART II.—*Constitution of Courts and High Commission*

7. (1) The office of High Commissioner created and constituted by the recited Orders in Council shall continue, and the High Commissioner shall continue to be styled "Her Britannic Majesty's High Commissioner for the Western Pacific," and shall have an official seal as heretofore.

(2) The High Commissioner shall be appointed by Commission under the Sign Manual. He may be suspended by the Secretary of State by writing under his hand.

(1) By instructions dated March 6, 1903 (text in *State Papers*, Vol. CXXXV, page 912), it was directed that jurisdiction should be exercisable in relation to all the areas defined in article 4.

(2) *State Papers*, Vol. LXXXI, page 1058.

(3) During a vacancy in the office of the High Commissioner, or during suspension of the High Commissioner, or in case of his incapacity by reason of illness or otherwise, all the powers of the High Commissioner shall be vested in such person as Her Majesty appoints under her Sign Manual, or, failing any such appointment, then in the person for the time being discharging the functions of Chief Justice of Fiji

(4) Subject to the provisions of this Order as to the places at which courts are to be held, and subject to any direction by the Secretary of State, the High Commissioner may exercise any of his powers, including his powers for making orders of prohibition and removal, although at the time of exercising them he is not within the limits of this Order

(5) Her Majesty may from time to time appoint by Commission under the Sign Manual any person to be Her Majesty's Special Commissioner for the Western Pacific. Subject to any restrictions contained in his Commission a Special Commissioner shall have and exercise, during Her Majesty's pleasure, the powers and jurisdiction of the High Commissioner within such part of the limits of this Order as is specified in his Commission. The appointment of a Special Commissioner shall not limit or affect any power or jurisdiction of the High Commissioner

(6) Subject to any restrictions contained in his Commission or prescribed from time to time by the Secretary of State the High Commissioner may from time to time, by writing under his hand and seal, appoint a Judicial Commissioner or a Deputy Commissioner to represent him in the exercise of any of his powers, or during his absence from the limits of this Order or from Fiji, with or without any limitations or conditions, and the Commissioner so appointed shall, for the purposes for which he is appointed, have and exercise the powers of the High Commissioner and shall be styled "Assistant High Commissioner". Any such appointment may be revoked by the High Commissioner by writing under his hand and seal. The appointment of an Assistant High Commissioner shall not limit or affect any power or jurisdiction of the High Commissioner

An Assistant High Commissioner shall not exercise any of his powers except within the limits of this Order or in Fiji

8 (1) The Chief Justice and every other judge for the time being of the Supreme Court shall be, by virtue of his office, a Judicial Commissioner for the Western Pacific for the purposes of this Order, and is in this Order referred to as a "Judicial Commissioner"

(2) Where, in the opinion of the High Commissioner, the attendance of a Judicial Commissioner holding office as aforesaid is impracticable, or would be inconvenient, the High Commissioner may from time to time in the name and on behalf of Her Majesty,

by writing under his hand and seal, appoint a person of legal knowledge and experience to be a Judicial Commissioner for particular purposes or for a particular time.

(3) Every Judicial Commissioner shall, for the purposes of so much of section 6 of "The Pacific Islanders Protection Act" of 1875 as relates to Deputy Commissioners, be deemed to be, and shall by virtue of this Order be, a Deputy Commissioner duly appointed and empowered under the provisions of this Order, and acting under the directions of the High Commissioner.

(4) A Judicial Commissioner shall not be deemed to be a Deputy Commissioner within any other article of this Order unless it be in any article expressly provided that for the purposes of that article a Judicial Commissioner shall be deemed to be a Deputy Commissioner.

9. (1) There shall be such number of deputies of the High Commissioner, each of whom shall be styled "one of Her Majesty's Deputy Commissioners for the Western Pacific," as a Secretary of State from time to time directs.

(2) Every Deputy Commissioner shall be appointed in the name and on behalf of Her Majesty by the High Commissioner, by writing under his hand and seal.

(3) Where, in the opinion of the High Commissioner, the attendance of a Deputy Commissioner appointed as aforesaid is impracticable, or would be inconvenient, the High Commissioner may from time to time, in the name and on behalf of Her Majesty, by writing under his hand and seal, appoint any officer holding Her Majesty's Commission or any other person a Deputy Commissioner for a particular purpose, or for a particular time and district.

(4) A Deputy Commissioner shall be liable to be suspended or removed by the High Commissioner by writing, under his hand and seal, stating the grounds of suspension or removal, and the same shall be reported forthwith to the Secretary of State.

(5) The appointment of a Deputy Commissioner shall not be affected by any vacancy or change in the office of High Commissioner.

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12. The court created by the recited Orders in Council shall continue, and be styled as heretofore "Her Britannic Majesty's High Commissioner's Court for the Western Pacific," and shall have a seal as heretofore, and shall be a superior court of record and a court of law and equity.

The members of the court shall be the High Commissioner, the Judicial Commissioners and the Deputy Commissioners. The court shall continue and be competent to act for all purposes notwithstanding any vacancy or vacancies therein.

13 All Her Majesty's judicial jurisdiction exercisable within the limits of this Order shall, subject and according to the provisions of this Order, be vested in and exercised by the High Commissioner's Court

For additional certainty Her Majesty expressly directs that jurisdiction in respect of all matters and questions arising under 'The Pacific Islanders Protection Acts, 1872 and 1875,' shall be vested in and exercised by the High Commissioner's Court

14—(1) The whole jurisdiction and authority of the High Commissioner's Court may, subject and according to the provisions of this Order, be exercised by the High Commissioner or by a Judicial Commissioner, either within any islands or place to which this Order applies (whether or not any Deputy Commissioner has been assigned thereto) or in Fiji

(2) The whole or any part of the jurisdiction and authority of the High Commissioner's Court may, subject and according to the provisions of this Order, be exercised in relation to any district, as herein defined, by a Deputy Commissioner, being authorised by the terms of his appointment to act for and in respect of that district, and being within that district

(3) The term 'district' in this Order means the particular district for and in respect of which a Deputy Commissioner is assigned to act

(4) Each member of the High Commissioner's Court exercising, for the time being, the jurisdiction and authority thereof in conformity with this Order shall, for the purposes of this Order, be deemed to form the High Commissioner's Court

(5) The term the court in this Order includes and applies to every member so exercising jurisdiction and authority

(6) Subject to any directions of the Secretary of State, the High Commissioner, from time to time, by writing under his hand, may define districts and declare the islands and places to be comprised therein, and may prescribe an official name or designation of any such district, and appoint a place or places therein at which the court may be held, and assign a Deputy Commissioner to act in respect thereof and prescribe a seal of the court for such district

(7) The court when held in and for any such district is in this Order referred to as a "district court"

(8) Any Deputy Commissioner who has been or may be appointed generally may hold a district court at any place within the limits of this Order provided that he shall not hold such court within a district for which a Deputy Commissioner is appointed, except in case of the illness or absence of such Deputy Commissioner, or in case of emergency, or with the previous sanction of the High Commissioner

15. The Supreme Court shall be the Court of Appeal for the purposes of this Order.

The Supreme Court or a judge thereof sitting in Fiji shall also have original jurisdiction to hear and determine in Fiji any civil or criminal cause or matter arising at any place within the limits of this Order, and may (subject as hereinafter provided), as it thinks just, proceed either according to the procedure for the time being in use in Fiji or according to the procedure under this Order.

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18. Any officer holding Her Majesty's Commission and being in command of any of Her Majesty's ships or acting for the purposes of this article with the written consent of the officer in command of any such ship, within the limits of this Order, exercise any of the powers following, that is to say—

(1) He may exercise any power which can be exercised by a Deputy Commissioner for the purpose of enforcing the attendance or apprehension of any person alleged to have committed an offence, and for the purpose of taking a preliminary examination and committing such person for trial.

(2) He may, with the consent in writing of such person in any case in which the offence is triable without assessors, hear and determine the case summarily, and for that purpose may exercise any of the powers of a Deputy Commissioner.

(3) He may, in any case, take any depositions on oath, and transmit them to any court acting under this Order; and thereupon such court may, if it think fit, issue its summons or warrant for the attendance or apprehension of any person appearing by such depositions to have been guilty of any offence.

(4) He may apprehend and cause to be conveyed within the local jurisdiction of any court acting under this Order any person against whom a warrant has been issued by any court acting under this Order, and may do so without being in possession of such warrant.

(5) He may authorise any person under his command to aid and assist him in exercise of any of the powers aforesaid in his presence or otherwise.

(6) He may, with the consent in writing of the parties to any civil dispute, exercise any of the powers which can be exercised by a Deputy Commissioner, either by way of conciliation or arbitration or by way of judicial determination.

Provided (1) that in all cases in which an officer exercises any power or jurisdiction under this section he shall, so soon as may be, report the particulars of the case with signed minutes of the proceedings to the nearest court or to the High Commissioner.



(2) That the High Commissioner may in any case, on such terms as he thinks just, vary or revoke any order or determination made under this article, and may direct a rehearing of any matter by such court as he thinks convenient

An officer acting in good faith in the supposed exercise of powers under this article shall have all the like immunities and protection as a Commissioner acting under this Order in a matter within his jurisdiction

\* \* \*

### PART III — *General Law*

20 Subject to the other provisions of this Order, the civil and criminal jurisdiction exercisable under this Order shall, so far as circumstances admit, be exercised upon the principles of and in conformity with the substance of the law for the time being in force in and for England, and with the powers vested in and according to the course of procedure and practice observed by and before courts of justice and justices of the peace in England, according to their respective jurisdictions and authorities

21 Except as to crimes or offences made or declared such by this Order, or by any regulation or rule made under it—

Any act other than an act that would by a court of justice having criminal jurisdiction in England be deemed a crime or offence, making the person doing such act liable to punishment in England shall not, in the exercise of criminal jurisdiction under this Order, be deemed a crime or offence, making the person doing such act liable to punishment

22 The provisions of any treaty with Her Majesty or her successors for the time being in force with respect to any place within the limits of this Order shall have effect as part of the law to be enforced under this Order in relation to such place, and in case of inconsistency between such provisions and the law in force in England, or anything contained in this Order, effect shall be given to such provisions

23 Crimes offences, wrongs, and breaches of contract against or affecting the person property, or rights of natives or foreigners, committed by persons subject to this Order, are, subject to the provisions of this Order, punishable or otherwise cognisable in the same manner as if they were committed against or affected the person, property, or rights of British subjects

### PART IV.—*General Powers of Court and General Procedure*

\* \* \*

25 In any matter, civil or criminal, a district court within whose district (in civil matters) the matter of complaint wholly or in part arose or happened, or the subject in dispute is wholly or partly

situate, or the contract in question was wholly or partly made, or the breach thereof wholly or partly occurred, or the defendant resides or carries on business, or (in criminal matters) the crime was wholly or partly committed, or the accused person happens to be, shall have jurisdiction, and may deal with the case, as if every material fact or thing had happened or was situate within its district; but any such court, if, in its opinion, justice or convenience so requires, may decline or suspend the exercise of jurisdiction, and may, if it thinks necessary or just, require security from the defendant or accused person for his appearance before some other court having jurisdiction in the matter, and for obedience to any judgment or order of such other court, and further, in a criminal case, if necessary, may arrest and commit the accused person, and cause him to be removed under warrant and in custody, to be dealt with by such other court.

26. A court acting under this Order shall have power to rehear any civil matter, and to review its judgment or orders in any civil case in which, in the opinion of the court, justice so requires, on such terms as to costs and otherwise as the court thinks just.

27. (1) The High Commissioner may, if he thinks fit, on the application of any party to any civil proceeding before a Deputy Commissioner, order a rehearing thereof before himself, with the Deputy Commissioner before whom it was heard, or with any other Deputy Commissioner.

(2) If, on the rehearing, there is a difference of opinion between the High Commissioner and the Deputy Commissioner sitting with him, the opinion of the High Commissioner shall prevail.

(3) The provisions of this Order respecting a hearing shall extend, as far as may be, to such a rehearing.

\* \* \*

34. The court may promote reconciliation, and encourage and facilitate the settlement in an amicable way of any suit or proceeding pending before it.

The court may, with the consent of the parties, refer to arbitration the final determination of any suit or proceeding pending before it, or of all matters in difference between the parties, on such terms and with such directions as to appointment of an arbitrator and other things as may seem fit, and may, if it thinks fit, take from the parties, or any of them, security to abide by the result of the reference.

In any such case the award shall be final and conclusive.

On the application of any party a decree of the court may be entered in conformity with the award, and such decree shall not be open to any appeal or rehearing whatever, except on the ground that it is not in conformity with the award.

Every agreement for reference to arbitration or submission to arbitration by consent may, on the application of any party, be made a rule of a court having jurisdiction in the matter of the reference or submission, which court shall thereupon have power and authority to enforce the agreement or submission and the award made thereunder, and to control and regulate the proceeding before and after the award in such manner and on such terms as may be just

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## PART V.—*Special Powers (Bankruptcy, Admiralty, Probate, Divorce, &c)*

### BANKRUPTCY

36 The court shall be a court of bankruptcy, and as such shall, as far as circumstances admit, have, with respect to persons subject to the jurisdiction of the court and to their debtors and creditors, all such jurisdiction as, for the time being, belongs to any judicial authority having for the time being jurisdiction in bankruptcy in England

### ADMIRALTY

37 "The Colonial Courts of Admiralty Act, 1890,"<sup>(1)</sup> shall apply to the court

Jurisdiction under the said Act shall not be exercised by a Deputy Commissioner unless with the previous consent of the High Commissioner, but such consent may be given generally or for a specified time in relation to a specified district

The 3rd sub-section of section 16 of the said Act (relating to rules of court) shall apply as if the limits of this Order were a British possession

### PROBATE

38<sup>(2)</sup> The court shall be a court of probate, and as such shall, as far as circumstances admit, have, for and within its jurisdiction, with respect to the property of persons subject to the jurisdiction of the court appearing to the court to have at the time of death their fixed places of abode in the jurisdiction of the court, all such jurisdiction as for the time being belongs to any court exercising probate jurisdiction in England

Probate or administration granted by a court shall have effect over all the property of the deceased within the jurisdiction, and shall effectually discharge persons dealing with an executor or administrator thereunder, and that notwithstanding any defect afterwards appears in the grant

<sup>(1)</sup> *State Papers* Vol LXXXII page 672

<sup>(2)</sup> So far as it relates to the Solomon Islands Gilbert and Ellice Islands and Ocean Island, this article was repealed by the Order in Council of January 21, 1914

Such a grant shall not be impeachable by reason only that the deceased had not at the time of his death his fixed place of abode within the jurisdiction.

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#### DIVORCE

47. The court shall be a court for matrimonial causes, and as such shall, as far as circumstances admit, have in itself with respect to residents subject to the jurisdiction of the court all such jurisdiction as for the time being belongs to the High Court of Justice in England in matrimonial causes.

Jurisdiction under this article shall be exercised only by the High Commissioner or a Judicial Commissioner or the Supreme Court.

48. The court, by a Judicial Commissioner, shall, as far as circumstances admit, have in itself exclusively, with respect to residents subject to the jurisdiction of the court, all such jurisdiction relative to the custody and management of the persons and estates of persons of unsound mind, as for the time being belongs to the Lord Chancellor or other person or persons in England entrusted by virtue of the Queen's Sign Manual with the care and commitment of the custody of the persons and estates of persons found by inquisition in England idiot, lunatic, or of unsound mind.

#### PART VI.—*Criminal Law and Procedure*

49. The crimes punishable under this Order are :—

(1) Any acts or omissions which are for the time being punishable in England on indictment with death, penal servitude, or imprisonment, as treasons, felonies, or misdemeanours.

(2) Acts or omissions by this Order, or by any regulations made by virtue of this Order, declared to be punishable as offences against this Order.

50. In case an act or omission is punishable both as a crime under the law in force in England and as an offence against this Order, the accused person may be tried and punished for such act or omission either as a crime as aforesaid, or as an offence against this Order, but he shall not be liable to be tried or punished in both ways.

51. Any person may be proceeded against, tried, and punished under this Order for the crime of piracy wheresoever committed.

#### OFFENCES AGAINST THIS ORDER

52. If any person subject to the jurisdiction of the court does any of the following things without Her Majesty's authority, that is to say :—

Levies war, or takes any part in any operation of war against, or aids or abets any person in carrying on war, insurrection, or rebellion against any King, Chief, tribe, or Power, every person so offending shall be deemed guilty of an offence against this Order, and, on conviction thereof, shall be liable (in the discretion of the court before which he is convicted) to be punished by imprisonment for any term not exceeding 2 years, with or without hard labour, and with or without a fine not exceeding £1,000, or by a fine not exceeding £1,000 without imprisonment, and any vessels, arms, munitions of war, stores, or other things used or provided for the purposes of an offence against this article may be seized, and may by any court having cognisance of the offence be declared to be and thereupon shall be forfeited to Her Majesty

In addition to such punishment, every such conviction shall of itself, and without further proceeding, make the person convicted liable to deportation, and the court before which he is convicted may order that he be deported to such place as the court directs

53 A person shall be deemed guilty of an offence against this Order—

(1) Who wilfully or knowingly acts in contravention of any treaty as defined in this Order, or of any regulations appended thereto

(2) Who acts in contravention of any of the Queen's Regulations to be made under this Order, or of any rules or regulations for the time being in force made under the authority of the recited Orders in Council

(3) Who, without reasonable and lawful excuse (proof of which shall lie on the accused person), endangers peace by disturbing any religious ceremony or observance, or publicly insulting any minister of any religion, or violating or insulting any place or object of religious worship, or doing any other act of a similar nature, whether in relation to any native or other form of religion or superstition

54 A person shall be deemed guilty of an offence against this Order—

Who smuggles or imports into or exports from any place any goods with intent to avoid payment of any duty payable thereon to any recognised Chief, or King, Government, tribe, or people, or any goods the importation or exportation whereof (as the case may be) into such place is prohibited by any such Chief, King, Government, tribe, or people of such place

A person convicted of an offence against this article shall be liable to imprisonment for any term not exceeding 3 months, or fine not exceeding £50, or both of those punishments, and any goods smuggled or imported in contravention of this article may, on conviction of the offender, or if he absconds or evades trial,

be declared forfeited to Her Majesty, together with any ship, boat, cask, case, or receptacle, wholly or partly belonging to the offender, and containing such goods.

55. If any person subject to the criminal jurisdiction of the court does any of the following things, namely :—

(1) Wilfully by act or threat obstructs any officer of or person executing any process of the court in the performance of duty ; or

(2) Within or close to the room or place where the court is sitting wilfully misbehaves in a violent, threatening, or disrespectful manner to the disturbance of the court, or to the intimidation of suitors or others resorting thereto ; or

(3) Wilfully insults any member of the court, or any assessor, or any person acting as a clerk or officer of the court during his sitting or attendance in court, or in his going to or returning from court ; or

(4) Does any act in relation to the court or a judge thereof, or a matter pending therein, which, if done in relation to a superior court in England, would be punishable as a contempt of such court, or as a libel on such court, or the judges thereof, or the administration of justice therein ; such person shall be liable to be apprehended by order of the court with or without warrant, and on inquiry and consideration, and after the hearing of any defence which such person may offer, without further process or trial, to be punished with a fine not exceeding £10, or with imprisonment not exceeding 24 hours. A minute shall be made and kept of every such case of punishment recording the facts of the offence and the extent of the punishment, and a copy of the minute shall be forthwith sent to the High Commissioner.

Provided that, if the court thinks fit, instead of proceeding under the preceding provisions, it may direct or cause the offender to be tried in a separate criminal prosecution or proceeding in which the offender shall be liable to be tried and punished for his offence as an offence against this Order.

Nothing herein shall interfere with the power of the court to remove or exclude persons who interrupt or obstruct the proceedings of the court.

56. If any person subject to the criminal jurisdiction of the court does any act or makes any publication of such kind, and under such circumstances, that, in the opinion of the court, grave danger to public order is thereby occasioned, the court shall have the same powers as it has in relation to apprehended breaches of the peace.

## CRIMINAL PROCEDURE

60 The court may cause to be apprehended and brought before it any person within and subject to the jurisdiction of the court and charged with having committed a crime triable by the court, and may deal with the accused according to the jurisdiction of the court and in conformity with the provisions of this Order, or where the crime is triable and is to be tried, in Her Majesty's dominions, may take the preliminary examination, and commit the accused for trial, and cause or allow him to be taken to the place of intended trial

61 (1) Where a person, subject to the criminal jurisdiction of the court, is charged with an offence on a summons or warrant issuing out of the court, he shall be brought before the court within 48 hours after service of the summons or execution of the warrant, unless, in any case, circumstances unavoidably prevent his being brought before the court within that time, which circumstances shall be recorded in the minutes

(2) In every case, he shall be brought before the court as soon as circumstances reasonably admit, and the time and circumstances shall be recorded in the minutes

62 (1) Where an accused person is in custody, he shall not be remanded at any time for more than 7 days, unless circumstances appear to the court to make it necessary or proper that he should be remanded for a longer time, which circumstances, and the time of remand, shall be recorded in the minutes

(2) In no case shall a remand be for more than 14 days at one time, unless in case of illness of the accused person or other case of necessity

63 Except in cases of murder, an accused person may be admitted to bail at any stage of the proceedings

64 Where the offence charged is one of the following, it shall be in the discretion of the court to admit the accused to bail or not, according to the circumstances, namely —

Felony (not being murder)

Riot

Assault on an officer of the court in the execution of his duty, or on any person acting in his aid

Neglect or breach of duty by an officer of the court

65 In all other cases except murder the court shall admit the accused to bail, unless in any instance the court, having regard to the circumstances, see good reason to the contrary, which reason shall be recorded in the minutes

66 Where a person is charged before a court elsewhere than in Fiji with a crime punishable with death or penal servitude for 7 years

or upwards, the court, on being satisfied by information or evidence on oath that there is reasonable ground for putting such person upon his trial for such crime, shall, if arrangement can be made for his trial at or near the place where he is charged by a Judicial Commissioner, arrange accordingly, or otherwise shall cause him to be removed for trial before the Supreme Court in Fiji, if the court is satisfied that the attendance of the necessary witnesses for the prosecution and defence respectively in Fiji can be secured, but in any case other than as aforesaid shall commit him for trial.

In case a person is so removed for trial, the provisions of "The Foreign Jurisdiction Act, 1890," section 6, or any enactment substituted for the same, shall be observed.

Where a person is, under, or by reason of, any provision of this Order, tried in Fiji or elsewhere in Her Majesty's dominions for an offence alleged to have been committed within the limits of this Order, the criminality of the alleged offence and the nature and amount of the punishment to which the person is liable shall be determined according to this Order, but in all other respects the trial shall be had and sentence passed and executed as if the offence had been committed at the place of the trial and according to the ordinary course of law at that place.

67. In the case of any crime other than as in the last preceding article mentioned, and which is by the law administered in the court punishable with imprisonment for 12 months or upwards, or with any greater punishment, it shall be in the discretion of the court, regard being had to all the circumstances of the case, and in particular to the practicability of procuring the necessary witnesses for the prosecution and defence to attend at a trial elsewhere than within the jurisdiction of the court, either to cause the accused person to be removed for trial as in the last preceding article mentioned, or to commit him for trial.

In the case of any such crime, where it appears to the court at any time before the trial that the charge, if proved, would be adequately punished by a sentence either of imprisonment for a term not exceeding 6 months, with or without hard labour, or of a money penalty not exceeding £50, the court, if it thinks fit, may try the case summarily, with or without assessors.

68. A person tried elsewhere than in Fiji for a crime to which either of the two last preceding articles applies shall, if practicable, be tried by the court with assessors, unless he consents to be tried summarily without assessors.

69. A person charged with a crime which is not punishable with imprisonment for 12 months or upwards, or with any greater punishment, or charged with an offence against this Order, shall be tried with assessors, or summarily without assessors, as the court thinks fit.



70 In every case in which a person is to be tried summarily without assessors, the court shall proceed to try him, without any commitment or other preliminary formality, forthwith or after such adjournment as may be proper for the purpose of obtaining evidence for the prosecution or defence, or for any other purpose

71 (1) Every court and authority in imposing and inflicting punishments shall have regard, so far as circumstances admit and subject to the other provisions of this Order, to the punishments imposed by the law of England in like cases, and to the mode in which the same are inflicted in England

(2) The court may in addition to or in lieu of any other punishment order any person convicted before it of any crime or offence to enter into a recognisance and find sureties to keep the peace or *be of good behaviour or otherwise*, and may, in default of compliance with the order, sentence such person to be imprisoned, for any period not exceeding 6 months

72 The court may order any person convicted before it of any crime or offence to pay all or any part of the expenses of or preliminary to his trial, and of his imprisonment or other punishment

Where it appears to the court that any charge made before it is malicious, or is frivolous and vexatious, the court may order all or any part of the expenses of the prosecution to be paid by the person making the charge

In either of the two last-mentioned cases, the amount ordered to be paid shall be deemed a debt due to the Crown, and may, by virtue of the order, without further proceedings, be levied on the property of the person convicted or making the charge, as the case may be, or may be enforced by imprisonment for not exceeding one month or until payment

73 (1) The court may, if it thinks fit, order a person convicted of an assault to pay to the person assaulted, by way of damages, any sum not exceeding £20

(2) Damages so ordered to be paid may be either in addition to or in lieu of a fine, and shall be recoverable in like manner as a fine

(3) The person convicted shall not be liable to an action for the assault

74 If, on a trial, the court is of opinion that the accused attempted to commit the offence with which he is charged, but did not complete it, he shall not be therefore acquitted, but the court may find him guilty of the attempt, and may adjudge him to be punished as if he had been charged with the attempt.

He shall not be liable to be afterwards prosecuted for the offence

75. If, on the trial of a person charged with robbery, the court is of opinion that the accused committed an assault with intent to rob, but did not commit robbery, he shall not be therefore acquitted, but the court may find him guilty of the assault, and may adjudge him to be punished as if he had been charged with the assault.

He shall not be liable to be afterwards prosecuted for the assault.

76. If, on a trial for any of the following offences, namely, burglary, or stealing in a dwelling-house, or breaking and entering and stealing in a shop, warehouse, or counting-house, or a building within the curtilage of a dwelling-house, or larceny, or feloniously receiving property stolen, embezzled, or otherwise feloniously taken, obtained, or disposed of, the facts proved authorise a conviction for one of those offences, not being the offence charged, the court may find the accused guilty of that other offence, and may adjudge him to be punished, as if he had been charged with that other offence.

He shall not be liable to be afterwards prosecuted for that other offence.

77. If any person procures or endeavours to procure or incites any other person to commit a crime or offence, he shall be punishable on conviction in the same manner as if he were convicted of an attempt to commit that crime or offence. If the crime or offence is actually committed in pursuance of the procurement or incitement, both persons may be tried and punished for that crime or offence as principal offenders.

78. Sentences of imprisonment shall be carried into effect in such prisons and in such manner as the High Commissioner from time to time directs.

If there be no such prison, or if, by reason of the condition of such prison, or the state of health of the prisoner, or on any other ground, the court thinks that the sentence ought not to be carried into effect in such prison, the prisoner shall, by warrant, be removed in custody to Fiji, there to undergo his sentence.

Any sentence of imprisonment under this Order may be with or without hard labour, as the court directs.

Any sentence of death shall be carried into effect in Fiji, or in such other place (being within the limits of this Order) as the High Commissioner may direct.

When a person is sent to Fiji for execution of a sentence of death or imprisonment, the provisions of the 7th section of "The Foreign Jurisdiction Act, 1890," or any enactment substituted for the same, shall be observed.

80 The High Commissioner may remit or commute, in whole or in part, any sentence of the court, and may suspend the execution of any sentence other than of the court when held before a Judicial Commissioner

In every case of sentence of death the minutes of the trial shall be transmitted to the High Commissioner, and the sentence shall not be carried into effect until confirmed by him

When the court held otherwise than before the High Commissioner or a Judicial Commissioner sentences a person to imprisonment exceeding 6 months or fine exceeding £100, or in any other case, if a Secretary of State by any general or particular instruction so directs, or if the High Commissioner so directs, the sentence shall be submitted to the Court of Appeal for review in the manner hereinafter in this Order prescribed

81 Where a sentence is, under this Order, submitted for review, the court shall transmit a copy of the minutes of the case, sealed with the seal of the court, and the notes of evidence, with such observations as it thinks necessary, and the Court of Appeal shall return the minutes, with such instructions as they think fit to give, either as to findings of fact, or as to law, or as to mitigation or alteration of sentence, and the court shall give effect to such instructions

Pending the review of a sentence the court may suspend the execution of the sentence, but is not obliged so to do unless so directed by the Court of Appeal, or by a Secretary of State or the High Commissioner. In either case the court may (unless otherwise directed) take such security, by way of bail or otherwise, and if necessary by commitment to prison for safe custody, as it thinks necessary for submission to the ultimate sentence

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84 (1) In cases of murder or manslaughter if either the death or *the criminal act which wholly or partly caused the death happened* within the jurisdiction of a court acting under this Order, such court shall have the like jurisdiction over any person subject to the jurisdiction of the court who is charged either as the principal offender or as accessory before the fact to murder, or as accessory after the fact to murder or manslaughter, as if both such criminal act and the death had happened within such jurisdiction

(2) In the case of any crime committed on the high seas, or within the admiralty jurisdiction, by any person on board a British ship, or any British subject on board a foreign ship to which he did not belong, a court acting under this Order shall have jurisdiction as if the crime had been committed within the district of such court. In cases tried under this provision no different sentence can be passed from the sentence which could be passed in England if the crime were tried there

(3) The foregoing provisions of this article shall be deemed to be adaptations, for the purposes of this Order and of "The Foreign Jurisdiction Act, 1890," or any Act substituted for the same, of the following enactments described in the first schedule to that Act (that is to say) :—

"The Admiralty Offences (Colonial) Act, 1849."<sup>(1)</sup>

"The Admiralty Offences (Colonial) Act, 1860."<sup>(2)</sup>

"The Merchant Shipping Act, 1867,"<sup>(3)</sup> section 11.

And the said enactments shall, so far as they are repeated and adapted by this article (but not further or otherwise), extend to all places within the limits of this Order.

85. "The Fugitive Offenders Act, 1881,"<sup>(4)</sup> shall apply to the limits of this Order as if such limits were a British possession, subject to the provisions following, that is to say :—

(1) The High Commissioner or a Judicial Commissioner or a Deputy Commissioner is, for the purposes of the said Act, substituted, within the limits of this Order, for the Governor of a British possession and for a superior court in a British possession or a judge thereof, and for a magistrate or justice of the peace in a British possession.

(2) The 4th, 5th and 6th sections of the said Act shall, within the limits of this Order, be subject to the following qualifications :—

(a) Any report under the 4th section shall be made to the High Commissioner, or if the provisional warrant under that section is issued by him, no such report shall be made ;

(b) Any certificate or report under the 5th section shall be sent to the High Commissioner, or if the committal is made by him no such certificate or report shall be sent ;

(c) So much of the 5th section as relates to the information to be given by the magistrate to a fugitive shall be excepted, and in lieu of such information the person acting as the magistrate shall inform the fugitive that in Fiji or any other British possession to which he may be conveyed, he has the right to apply for a writ of habeas corpus or like other process ;

(d) So much of the 6th section as requires the expiration of 15 days before the issue of a warrant shall be excepted.

(3) Before the issue of a warrant for the return of a fugitive to a British possession, evidence may be required that the proceedings to obtain such return are taken with the consent of the Governor of that possession.

(4) For the purposes of part II of the said Act the whole of the limits of this Order and Fiji shall be deemed to be one group of

<sup>(1)</sup> 12 & 13 Vict., cap. 96.

<sup>(2)</sup> 23 & 24 Vict., cap. 88.

<sup>(3)</sup> *State Papers*, Vol. LXVI, page 711.

<sup>(4)</sup> *Ibid.*, Vol. LXXII, page 622.

British possessions, and any particular district constituted under this Order shall be deemed to be a British possession in such group

(5) The expression "offence punishable on indictment" in the said Act, includes any offence for which imprisonment for 6 months or upwards can be inflicted under this Order or under the laws in force in a British possession to which this article applies

The foregoing provisions of this article shall be deemed to be adaptations for the purposes of this Order, and of "The Foreign Jurisdiction Act, 1890," or any Act substituted for the same, and of 'The Fugitive Offenders Act, 1881'

\* \* \*

87 Nothing in this Order shall be deemed to affect Her Majesty's prerogative of pardon

### PART VII — *Appeals*

88 In civil matters an appeal shall lie from a court to the Court of Appeal by the leave of the court, or without such leave where leave is given by the Court of Appeal

The appeal shall be brought within such time and in such manner, as regards the form and transmission of the appeal, and as to stay of execution and otherwise, as may be prescribed by any rules of procedure made under this Order, or as in any case by any special leave or order the said Court of Appeal may direct

A court may, before deciding any civil matter, state a case in writing for the opinion of the Court of Appeal, and shall give effect to such opinion and when a case has been so stated, no appeal shall be brought against the decision of the court in conformity therewith unless by leave of the Court of Appeal

As regards matters not provided for by this article, the procedure on appeal in the Court of Appeal may be the same as the ordinary procedure of that court upon the hearing of any application for a new trial, or upon a case stated or reserved for the opinion of the court, and the judgment or order of such court in the appeal shall be certified under its seal to the court which shall give effect thereto

The decision of a Court of Appeal under this Order shall be subject to appeal to Her Majesty in Council, in the same manner and on the same conditions as to the amount involved and otherwise as any other decision of the same Court of Appeal

### PART VIII — *Evidence*

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PART IX.—*Assessors*

98. Where a court proceeds, in pursuance of this Order, to hear and determine any case, civil or criminal, with assessors, the court shall nominate and summon as assessors not less than two and not more than four indifferent persons subject to the jurisdiction of the court, of good repute, resident in the district of the court or belonging to a British ship.

Where, however, by reason of local circumstances, the court is able to obtain the presence of one fit person only as assessor, the court may sit with him alone as assessor; and where, for like reasons, the court is not able to obtain the presence of any fit person as assessor, the court may (notwithstanding anything in this Order) sit without an assessor; but in every such case the courts shall record in the minutes of proceedings its reasons for sitting with one assessor only, or without an assessor.

An assessor shall not have voice or vote in the decision of the court in any case, civil or criminal; but an assessor dissenting in a civil case from any decision of the court, or in a criminal case from any decision of the court, or the conviction, or the amount of punishment awarded, may record in the minutes of proceedings his dissent and the grounds thereof; and an assessor dissenting shall be entitled to receive gratis a certified copy of the minutes.

99. Where a suit relates to money, goods, or other property of a less amount or value than £300—and does not relate to or involve, directly or indirectly, a question respecting any matter at issue of the amount or value of £300 or upwards—and is not brought for recovery of damages of a greater amount than £300—the court may hear and determine the case without assessors.

In all other civil cases the court (subject to the provisions of this Order respecting inability to obtain an assessor) shall hear and determine the case with assessors.

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PART X.—*Rules of Procedure*

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PART XI.—*Treaties and Queen's Regulations*

108.<sup>(1)</sup> The High Commissioner shall have power to make, alter, and revoke regulations (to be called "Queen's Regulations") for the following purposes (that is to say):—

<sup>(1)</sup> Under article 6 of the Order in Council of November 10, 1915, this article no longer applies to the Gilbert and Ellice Islands.

(1) For securing the observance of any treaty for the time being in force relating to any place to which this Order applies, or of any native or local law, or custom whether relating to trade commerce, revenue, or any other matter

(2) For the peace, order, and good government of persons subject to the jurisdiction of the court within the limits of this Order in relation to matters not provided for by this Order, including the prohibition and punishment of acts tending to disturb the peace between native Chiefs, tribes, or populations

(3) For requiring returns to be made of the nature, quantity and value of articles exported from or imported into any place within which jurisdiction is for the time being exercised under this Order, or any part thereof, by or on account of any person subject to the jurisdiction of the court or in any British ship, and for prescribing the times and manner at or in which, and the persons by whom, such returns are to be made

(4) For the governance, visitation, care and superintendence of prisons

(5) For registration of British subjects in accordance with the provisions of this Order, and prescribing the court in which such registration is to be made

Any regulations under this article may provide for forfeiture of any goods receptacles or things in relation to which, or to the contents of which, any breach is committed of such regulations, or of any treaty or any native or local law or custom, the observance of which is provided for by such regulations

Any regulations made under this article shall be published in the like manner in which this Order is herein directed to be published, and shall from and after the date of such publication or from and after any date which may be specified in lieu thereof in any such regulations and thereafter until disallowed by a Secretary of State, have effect as if contained in this Order

Any rules or regulations heretofore made under the authority of any Order in Council repealed by this Order, and which are in force at the time of the commencement of this Order, and which are not expressly repealed by this Order, shall, notwithstanding the repeal of that Order, continue in force until revoked by the High Commissioner, but shall be subject to the provisions of this Order, and so far as they are inconsistent with any provisions of this Order or with any regulations or rules made under this Order, this Order, and any regulations or rules made under it shall have effect

A breach of any such regulations shall be deemed to be an offence against this Order, and shall be punishable accordingly in addition to any forfeiture as aforesaid

PART XII.—*Foreigners and Foreign Courts*

## SUITS BY OR AGAINST FOREIGNERS

109. (1) Where a foreigner desires to institute or take a suit or proceeding of a civil nature against a British subject, or a British subject desires to institute or take a suit or proceeding of a civil nature against a foreigner, the court may entertain the suit or proceeding, and hear and determine it (and if all parties desire, or the court directs a trial with assessors, then with assessors) at a place where such trial might be had if all parties were British subjects, and in all other respects according to the ordinary course of the court.

(2) Provided that the foreigner (i) first files in the court his consent to the jurisdiction of the court; and (ii) also, if required by the court, obtains and files a certificate in writing from a competent authority of his own Government, to the effect that no objection is made by that Government to the foreigner submitting in the particular cause or matter to the jurisdiction of the court; and (iii) also, if required by the court, gives security to the satisfaction of the court, to such reasonable amount as the court directs, by deposit of money or otherwise, to pay fees, costs, damages, and expenses, and to abide by and perform the decision to be given by the court or on appeal.

(3) A counter-claim or cross suit cannot be brought or instituted in the court against a plaintiff, being a foreigner, who has submitted to the jurisdiction, by a defendant, except by leave of the court first obtained.

(4) The court, before giving leave, requires proof from the defendant that his claim arises out of the matter in dispute, and that there is reasonable ground for it, and that it is not made for vexation and delay.

(5) Nothing in this article prevents the defendant from instituting or taking in the court against the foreigner, after the termination of the suit or proceeding in which the foreigner is plaintiff, any suit or proceeding that the defendant might have instituted or taken in the court against the foreigner if no provision restraining counter-claims or cross suits had been inserted in this Order.

(6) Where a foreigner obtains in the court an order against a defendant, being a British subject, and in another suit that defendant is plaintiff and the foreigner is defendant, the court may, if it thinks fit, on the application of the British subject, stay the enforcement of the order pending that other suit, and may set off any amount ordered to be paid by one party in one suit against any amount ordered to be paid by the other party in the other suit.



(7) Where a plaintiff, being a foreigner, obtains in the court an order against two or more defendants, being British subjects, jointly, and in another suit one of them is plaintiff and the foreigner is defendant, the court may, if it thinks fit, on the application of the British subject, stay the enforcement of the order pending that other suit, and may set off any amount ordered to be paid by one party in one suit against any amount ordered to be paid by the other party in the other suit without prejudice to the right of the British subject to require contribution from his co defendants under the joint liability

(8) Where a foreigner is co-plaintiff in a suit with a British subject who is within the particular jurisdiction, it is not necessary for the foreigner to make deposit or give security for costs unless the court so directs, but the co plaintiff British subject is responsible for all fees and costs

The foregoing provisions of this article shall take effect only in places within the limits of the Order which are not British settlements or under the protection of Her Majesty

#### FOREIGN TRIBUNALS

110 (1) Where it is shown to the court that the attendance of any person subject to the jurisdiction of the court to give evidence, or for any other purpose connected with the administration of justice, is required in a native or foreign court, or before a native or foreign judicial officer, or in a court, or before a judicial officer, of any State in amity with Her Majesty, the court may, if it thinks fit, in a case and in circumstances in which it would require his attendance before itself, order that he do attend and give evidence and produce documents as so required. The order may be made subject to conditions as to payment or tender of expenses or otherwise

(2) If the person ordered to attend, having reasonable notice of the time and place at which he is required to attend, fails to attend accordingly, and does not excuse his failure to the satisfaction of the court, or if he refuses to give evidence, or wilfully gives false evidence, or fails to produce documents which he is properly required to produce, he is, independently of any other liability, guilty of an offence against this Order, and for every such offence, on conviction thereof, by summary trial, is liable to a fine not exceeding £100 or to imprisonment for not exceeding one month in the discretion of the court

\* \* \*

C. L. PEEL

\* \* \*

4. From and after the coming into operation of this Order the aforesaid islands, together with all small islands, islets, rocks, and reefs, depending on them, shall be annexed to, and form part of, His Majesty's dominions, and shall be known as "the Gilbert and Ellice Islands Colony," hereinafter called "the Colony."

\* \* \*

6. Subject to the provisions of this Order, "The Pacific Order in Council"<sup>(1)</sup> shall (with the exception of article 108), notwithstanding the cession of the Gilbert and Ellice Islands and their annexation to His Majesty's dominions, be and remain in force, and continue to have full effect to the Colony until other provision shall be made by His Majesty in Council.

7. Subject to the directions of a Secretary of State, the High Commissioner may appoint a Resident Commissioner and so many fit persons as, in the interest of His Majesty's service, he may think necessary to be Deputy Commissioners or other officers as provided by "The Pacific Order in Council," and may define from time to time the districts within which such officers shall respectively discharge their functions, provided that every officer appointed under the provisions of the said Order and holding office in the Gilbert and Ellice Islands at the commencement of this Order shall continue to hold his office in the Colony subject to the provisions of this Order.

Every such officer may exercise such powers and authorities as the High Commissioner may, with the like approval, assign to him, subject nevertheless to such directions and instructions as the High Commissioner may from time to time think fit to give him. The appointment of such officers shall not abridge, alter, or affect the right of the High Commissioner to execute and discharge all the powers and authorities hereby conferred upon him.

The High Commissioner may, subject to confirmation by a Secretary of State, remove any officer appointed as aforesaid whether before or after the commencement of this Order.

8. In the exercise of the powers and authorities hereby conferred upon him, the High Commissioner may, amongst other things, from time to time, by ordinance, provide for the administration of justice, the raising of revenue, and generally for the peace, order, and good government of the Colony, and of all persons therein, including the prohibition and punishment of acts tending to disturb the public peace.

Provided as follows :—

(1) That nothing in any such ordinance or ordinances contained shall take away or affect any rights secured to any native in the Colony by any treaties or agreements made on behalf or with the

sanction of Her late Majesty Queen Victoria, His late Majesty King Edward VII, or of His Majesty, and all such treaties and agreements shall be and remain operative and in force, and all pledges and undertakings therein contained shall remain mutually binding on all parties to the same

(2) That all laws, King's Regulations, bye laws, and regulations of whatsoever nature in force in the Gilbert and Ellice Islands at the date of the commencement of this Order shall continue in force in the Colony until repealed, revoked, or amended by or in pursuance of any ordinance passed by the High Commissioner

(3) That the High Commissioner, in making ordinances, shall respect any native laws and customs by which the civil relations of any native Chiefs, tribes, or populations under His Majesty's protection are now regulated, except so far as the same may be in compatible with the due exercise of His Majesty's power and jurisdiction, or clearly injurious to the welfare of the said natives

\* \* \*

## WINDWARD ISLANDS

- 1 Letters Patent constituting the Office of Governor and Commander-in-Chief —Westminster, November 13, 1936

Text in *Statutory Rules and Orders* 1936, Vol II, page 3687

- 2 Royal Instructions to the Governor and Commander-in-Chief —St James's, April 9, 1924

*Amendment*

ADDITIONAL INSTRUCTIONS

St James's November 13, 1936

. . .

- 2 Royal Instructions, 1924 (as amended 1936)

\* \* \*

- 9 The Executive Councils of each of the Islands shall consist of the following members, that is to say

(a) in the case of Grenada, the officers lawfully discharging the functions of Colonial Secretary, Attorney-General and Treasurer of the Island ;

(b) in the case of the Islands of Saint Vincent and Saint Lucia, the officers lawfully discharging the functions of Administrator (if the Governor is present in the Island), Attorney-General and Treasurer of the Island,

who shall be styled "*ex officio* members," and such other persons as we may from time to time appoint by any instruction or warrant under our Sign Manual and Signet, or as the Governor, in pursuance of any instructions from us through one of our Principal Secretaries of State, may from time to time appoint by an instrument under the Public Seal of the Island :

Provided that notwithstanding anything contained in these our Instructions, if any member of the Executive Council of any of the said Islands holding office in the public service of that Island shall cease so to do, his seat in the Council shall thereupon become vacant.

Whenever upon any special occasion the Governor desires to obtain the advice of any person within any of the Islands relating to affairs therein, he may by an instrument under the Public Seal of such Island, summon for such special occasion any such person as an extraordinary member of the Executive Council of the Island.

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## GRENADA

Order in Council providing for the Constitution of the  
Legislative Council.—London, October 27, 1936.

Text in *Statutory Rules and Orders*, 1936, Vol. II, page 3636.

\* \* \*

4. The Council shall consist of the Governor, three *ex officio* members, four nominated members and seven elected members.

The *ex officio* members shall be the persons for the time being lawfully discharging the functions of the respective offices of Colonial Secretary, of Attorney-General, and of Treasurer.

The nominated members shall be such persons not holding any office of emolument under the Crown within Grenada and not exceeding four in number at any one time, as His Majesty may from time to time appoint by any instruction or warrant under his Sign Manual and Signet, or as the Governor in pursuance of instructions from His Majesty through a Secretary of State may from time to time appoint under the Public Seal of the Island

The elected members shall be persons to be elected as hereinafter provided

5 The Governor may summon to the Council the person for the time being performing the functions of head of any Government Department in the Island notwithstanding that such person may not be a member of the Council, when in the opinion of the Governor the business before the Council renders the presence of such person desirable Any person so summoned shall be entitled to take part in the proceedings of the Council relating to the matter in respect of which he was summoned but shall not thereby become a member of the Council and shall not have the right to vote in the Council

\* \* \*

7 No person shall be capable of being elected a member of the Council, or, having been elected, shall sit or vote in the Council, who at the time of election—

(1) Is the holder of any office of emolument under the Crown or under a municipal corporation within Grenada, or

(2) Is a minister of religion, or

(3) Is a returning officer of the district for which the election is held or

(4) Is not entitled to vote at the election of a member of the Council for some electoral district, or

(5) Does not—

(a) possess a clear income of £200 per annum, or

(b) own real property in the Island of the value of at least £500 above all charges and encumbrances affecting the same

\* \* \*

18 (1) Every person shall be entitled to be registered as a voter for any one electoral district, and when registered, to vote at the election of a member of the Council, for such district, who is qualified as follows, that is to say —

(a) Has attained the age of 21 years

(b) Is not a lunatic so found or declared under any law in force in the Island

(c) Is a British subject

(d) Has resided in the Island for 12 months at least previous to the date of registration or is domiciled in the Island and is resident therein at the date of such registration, and in either case possesses any one of the following qualifications :—

(i) has a clear income of at least £30 per annum,

(ii) is the owner of real property within the Island of the value of at least £100 above all charges and encumbrances affecting the same,

(iii) is paying rent in respect of real property situate within the Island at the rate of at least £12 per annum,

(iv) being resident in the district has paid direct taxes in the previous year to an amount of at least 15s.

Provided that—

(i) No person shall be registered as a voter or be entitled to vote for the election of a member of the Council who has, in any part of His Majesty's dominions or any territory under His Majesty's protection, been convicted of perjury or been sentenced to death, or penal servitude, or imprisonment with hard labour or for a term exceeding 12 months, and has not either suffered the punishment to which he was sentenced or such other punishment as by competent authority may have been substituted for the same or received a free pardon from His Majesty.

(ii) No person shall be registered in any register of voters who has, within 12 calendar months immediately preceding the 1st day of January in the year in which that register is prepared, received any relief from public or parochial funds except such special relief as may be declared by any law for the time being in force not to be relief for the purposes of this proviso.

(iii) No person shall be registered as a voter unless he shall with his own hand have subscribed his name to his claim to be registered and written thereon the date of such subscription or, if he is incapacitated by blindness or other physical cause from so doing, such subscription and writing shall be performed on his behalf by the officer charged with the duty of registering voters.

(2) For the purposes of the foregoing sub-section the expression "direct taxes" shall include income tax and land and house tax payable under the Income Tax and the Taxes Management Ordinances respectively and any ordinances amending or substituted for the same, but no other taxes whatever.

\* \* \*

39. If the Governor shall consider that it is expedient in the interests of public faith or of good government (which expressions shall, without prejudice to their generality, include the responsibility of the Island as a component part of the British Empire, and all matters pertaining to the appointment, salary, and other conditions of service of any public officer or officers) that any bill

introduced, or any motion, resolution or vote proposed for decision, in the Council should have effect, then, if the Council fail to pass such bill, motion, resolution or vote within such time as the Governor may think reasonable and expedient, the Governor at any time within his discretion may notwithstanding any provisions of this Order or of any standing orders of the Council, declare that such bill, motion, resolution or vote shall have effect and thereupon the same shall have effect as if it had been passed by the Council, and in the case of any such bill the provisions of this Order as to assent to bills and disallowance of ordinances shall apply accordingly

\* \* \*

## ST. LUCIA

### Order in Council providing for the Constitution of the Legislative Council — London, October 27, 1936

Text in *Statutory Rules and Orders*, 1936, Vol II page 3693

#### *Amendment*

##### ORDER IN COUNCIL

London, March 18, 1937

Text in *Statutory Rules and  
Orders* 1937, page 2419

### Order in Council, 1936 (as amended 1937)

\* \* \*

4 The Council shall consist of the Governor, three *ex officio* members, three nominated members and five elected members

The *ex officio* members shall be the persons for the time being lawfully discharging the functions of the respective offices of Administrator, of Attorney General and of Treasurer

The nominated members shall be such persons not holding any office of emolument under the Crown within Saint Lucia, and not exceeding three in number at any one time, as His Majesty may from time to time appoint by any instruction or warrant under his Sign Manual and Signet, or as the Governor in pursuance of instructions from His Majesty through a Secretary of State may from time to time appoint under the Public Seal of the Island

The elected members shall be persons to be elected as hereinafter provided

5, 7 and 18. [Identical, *mutatis mutandis*, with the same articles of "The Grenada (Legislative Council) Order in Council, 1936": see page 656.]

\* \* \*

39. If the Governor shall consider that it is expedient—

(a) in the interests of public faith or of good government (which expressions shall, without prejudice to their generality, include the responsibility of the Island as a component part of the British Empire, and all matters pertaining to the appointment, salary, and other conditions of service of any public officer or officers; or

(b) in order to secure detailed control of the finances of the Island during such time as, by virtue of receipt of financial assistance by the Island from His Majesty's Exchequer for the purpose of balancing the annual budget or otherwise, such control rests with His Majesty's Government,

that any bill introduced, or any motion, resolution or vote proposed for decision, in the Council should have effect, then, if the Council fail to pass such bill, motion, resolution or vote within such time as the Governor may think reasonable and expedient, the Governor at any time within his discretion may notwithstanding any provisions of this Order or of any standing orders of the Council, declare that such bill, motion, resolution or vote shall have effect and thereupon the same shall have effect as if it had been passed by the Council, and in the case of any such bill the provisions of this Order as to assent to bills and disallowance of ordinances shall apply accordingly.

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## ST. VINCENT

Order in Council providing for the Constitution of the Legislative Council.—London, October 27, 1936.

Text in *Statutory Rules and Orders*, 1936, Vol. II, page 3652.

\* \* \*



4, 5, 7, 18 and 39 [Identical, *mutatis mutandis*, with the same articles of "The Grenada (Legislative Council) Order in Council, 1936" — see page 655]

\* \* \*

## ZANZIBAR PROTECTORATE

1. Decree of the Sultan providing for the Administration of Justice and the Constitution of Courts — Zanzibar, July 29, 1923

### *Amendments*

To 1934      Text, as amended, in *Revised Edition of the Zanzibar Laws*, 1934, chapter 3

- 2 Order in Council providing for the Exercise of His Majesty's Jurisdiction — London, December 8, 1924.

Text in *State Papers*, Vol CXXIX, page 225

### *Amendments*

#### ORDERS IN COUNCIL

London June 25 1925      Text in *State Papers*, Vol CXXI page 246

London, February 1 1926      Text in *State Papers*, Vol CXXIII, page 125

London, January 31, 1936      Text in *Statutory Rules and Orders* 1936, Vol I, page 947

- 3 Decree of the Sultan providing for the Establishment of Executive and Legislative Councils — Zanzibar, January 15, 1926      Text in *State Papers*, Vol CXXIII, page 697

### *Amendments*

#### DECREES

Zanzibar, November 9, 1934      Text, as amended in *Revised Edition of the Zanzibar Laws*, 1934, chapter 28

Zanzibar, December 26, 1936      Text in *Laws of Zanzibar*, 1935-1936 Supplement, page 9

. . .

- i. Court Decree, 1923 (as amended to 1934).

\* \* \*

3. Nothing in this decree shall apply to or in any way detract from any jurisdiction which His Highness the Sultan has heretofore delegated or transferred or may hereafter delegate or transfer to the British Court or which may by any other means be vested in the British Court, and this decree shall not affect any suit, trial, matter or proceeding which may be brought or had in the British Court by virtue of its jurisdiction aforesaid.

4. The supreme judicial authority is and remains vested in His Highness the Sultan as heretofore.

5. It shall be lawful for His Highness the Sultan in the exercise of his royal prerogative of mercy on the recommendation of the British Resident to grant to any offender (other than a person under sentence of death) convicted in any of his courts a pardon either free or subject to lawful conditions, or any remission of the sentence passed on such offender, or any respite of the execution of sentence for such period as he may think fit, or to remit any fines, penalties or forfeitures to which such offender may be liable.

6. No action either civil or criminal shall lie against any member of the royal family ("Aulad Imam") unless permission has first been obtained from the British Resident. For the purpose of this section the expression "royal family" shall include only such persons as the British Resident may from time to time notify in the *Gazette*.

7. In civil matters the law of Islam is and is hereby declared to be the fundamental law of the Protectorate.

8. (1) There shall be a court styled "His Highness the Sultan's Court for Zanzibar" hereinafter referred to as "the Zanzibar Court"

(2) Subject to the other provisions of this decree all His Highness' jurisdiction civil and criminal shall be and is hereby vested in the Zanzibar Court.

Provided that where two or more of His Highness' subjects apply to him in writing requesting that he shall determine any such matters stated to be in issue between them as would constitute a good cause of action in a civil suit and His Highness elects to accede to their request, and in writing communicates his decision in such matter to the Zanzibar Court, a decree may be issued giving effect to such decision which shall be final and shall not be the subject matter of any appeal or subsequent judicial proceeding except that it shall be enforceable forthwith as a decree passed by the Zanzibar Court.

(3) The Zanzibar Court shall consist of one or more of the judges of the British Court sitting either together or alone; provided that in criminal cases the Court shall sit with a jury or with assessors in accordance with the provisions of the law relating to criminal procedure for the time being in force.

(4) Subject to any rules of court the judge of the British Court shall make such arrangements as he thinks fit for the *distribution* of the business of the Court

(5) The Zanzibar Court shall sit at such places in Zanzibar or Pemba as the judge of the British Court may direct

\* \* \*

10 (1) There shall be courts subordinate to the Zanzibar Court as follows—

(a) Courts of Resident Magistrates or District Commissioners or of persons specially appointed under sub-section (3) of this section to be called "first class subordinate courts";

(b) Courts of persons specially appointed under sub-section (3) of this section to be called "second class subordinate courts",

(c) Courts of Assistant District Commissioners or of persons specially appointed under sub-section (3) of this section to be called "third class subordinate courts",

(d) Courts of *kathis* to be called "*kathis'* courts",

(e) Courts of *mudirs*, *masheha* or other persons specially empowered in that behalf by the British Resident to be called "district courts"

(2) Every Resident Magistrate and District Commissioner shall have jurisdiction by virtue of his office to hold a subordinate court of the first class within the district to which he is assigned every Assistant District Commissioner shall have jurisdiction by virtue of his office to hold a subordinate court of the third class within the district to which he is assigned, and every *kathi* shall have jurisdiction by virtue of his office to hold a *kathi's* court within the district to which he is assigned

(3) The British Resident may for good and sufficient reason by appointment in the *Gazette* confer upon any person jurisdiction to hold a subordinate court of the first, second or third class, such appointment shall define the local area in which such jurisdiction may be exercised

(4) Subordinate courts shall sit at such places within the local limits of their jurisdiction as the Chief Justice of the British Court may direct

(5) The Zanzibar Court shall exercise general powers of supervision over all subordinate courts

(6) A judge of the British Court (other than the principal judge of such court) may sit in a court subordinate to the Zanzibar Court, and while he is so sitting his court shall for all purposes be deemed to be a court of a Resident Magistrate

11 In the absence of any special appointment under sub section (3) of section 10, the local limits of the jurisdiction of subordinate courts

shall in the case of courts of the first class be the island of Zanzibar or Pemba as the case may be in which it is held and in the case of a court of the second or third class or kathi's court be the district in which such court is held.

\* \* \*

13. A district court shall be held in such places, by such person or persons and shall exercise such jurisdiction, civil or criminal, within such limits and subject to such conditions as to appeal, procedure or otherwise as the British Resident may by proclamation published in the *Gazette* direct.

14. (1) Subject to the other provisions of this decree and of any other law for the time being in force the Zanzibar Court shall have full jurisdiction in any civil suit or proceeding.

(2) Subject to the provisions of any other law for the time being in force a subordinate court of the first class shall have jurisdiction to hear all suits and proceedings of a civil nature, but such jurisdiction shall in all cases wherein the subject matter can be estimated at a money value be limited to suits in which such money value does not exceed 1,500 rupees: Provided that the principal judge of the British Court may in his discretion either generally or in special cases fix such lower limit as he may think fit.

(3) The civil jurisdiction of a subordinate court of the second or third class shall be limited to suits and proceedings in which the subject matter can be estimated at a money value and does not exceed 500 rupees.

(4) The jurisdiction of a kathi's court shall be limited—

(a) to matters relating to the personal status, marriage, divorce and inheritance (where the claim in respect of such inheritance does not exceed 1,000 rupees) of Arabs and Mahomedan Africans; and

(b) to suits and proceedings of a civil nature in which the subject matter can be estimated at a money value and does not exceed 500 rupees.

15. (1) The Zanzibar Court shall, in all matters civil or criminal, have an original jurisdiction concurrent with the jurisdiction of the subordinate courts hereby constituted, and a subordinate court of the first class shall have an original jurisdiction concurrent with that of any other subordinate court within the local limits of its jurisdiction.

(2) The Zanzibar Court shall have power to direct the distribution of business between any of the courts hereby constituted, and may order that any particular case or class of cases shall be tried either before itself or before any subordinate court of competent jurisdiction whether or not any proceedings therein have been instituted or taken in or before the court which would ordinarily have jurisdiction to enquire into or hear such case.

16 In any civil suit or proceeding any court may on its own motion or at the request of any of the parties in its discretion call in the assistance of one or more khatibs of His Highness the Sultan's Ulema as assessors, and shall in that case record the opinion of such assessor or assessors, provided that no assessor so called in as aforesaid shall have any voice in the decision of the court

17 (1) Subject to the other provisions of this decree or of any other law for the time being in force an appeal shall lie to the Court of Appeal—

(a) from the decrees or from any part of the decrees or from the orders of the Zanzibar Court passed or made in the exercise of its original civil jurisdiction, and

(b) from any finding, order or sentence other than an order of acquittal recorded or passed by the Zanzibar Court in the exercise of its original criminal jurisdiction

18 The Court of Appeal shall have jurisdiction to entertain, hear and determine such appeal, and deal therewith in accordance with the provisions of "The Eastern African Court of Appeal Order in Council, 1921,"<sup>(1)</sup> or any amendment thereof or any Order in Council substituted therefor, or any rules issued thereunder or in force by virtue of the provisions thereof

19 Whenever under the provisions of "The Eastern African (Appeal to Privy Council) Order in Council, 1921,"<sup>(2)</sup> or any amendment thereof or any Order in Council substituted therefor, an appeal shall lie as of right or at the discretion of the Court of Appeal from any judgment, whether final or interlocutory, of the Court of Appeal to His Majesty in Council, an appeal shall to a like extent lie to His Majesty in Council from any judgment, whether final or interlocutory, of the Court of Appeal sitting in appeal from the Zanzibar Court

20 His Majesty in Council shall have jurisdiction to entertain, hear and determine such appeal, and to deal therewith in accordance with the provisions of "The Eastern African (Appeal to Privy Council) Order in Council, 1921," or any amendment thereof or any Order in Council substituted therefor, and in accordance with such rules and regulations as may from time to time be prescribed by His Majesty in Council

21 The Zanzibar Court shall conform with and execute any judgment of the Court of Appeal made on any appeal from that Court, and any Order of His Majesty in Council made on appeal from the Court of Appeal sitting in appeal from the Zanzibar Court, in like manner as any original judgment of the Zanzibar Court should or might have been executed

\* \* \*

<sup>(1)</sup> *State Papers* Vol CXVII, page 5

<sup>(2)</sup> *Ibid*, Vol CXVII page 9

23. (1) Subject to any law for the time being in force an appeal shall lie from any decree, finding, order or sentence of any subordinate court to the Zanzibar Court

Provided that, in civil matters, the amount or value involved in the suit exceeds 250 rupees or that leave to appeal is granted by the Zanzibar Court.

(2) Appeals in civil matters shall be heard by one or more judges with or without two or more kathis as assessors as the judge of the British Court may direct.

\* \* \*

## 2. Order in Council, 1924 (as amended 1925 and 1936).

\* \* \*

### PART I.—*Preliminary*

\* \* \*

### PART II.—*Application and Effect of Order*

5. (1) This Order extends to British subjects, to British protected persons, to foreigners with respect to whom the Sultan of Zanzibar has decreed, or the Sovereign or Government whose subjects or citizens they are or under whose protection they are or are claimed as being, has, by treaty or otherwise, agreed with His Majesty for or consented to the exercise of jurisdiction by His Majesty, and to Zanzibar subjects in the regular service of the subjects and citizens aforesaid; and the expression "person subject to this Order" shall be construed accordingly.

(2) This Order also extends to (a) the property and all personal or proprietary rights and liabilities in Zanzibar of persons subject to this Order; (b) British ships, with their boats, and the property on board thereof; and (c) foreign ships belonging to persons who are, or if they were in Zanzibar would be, persons subject to this Order, so, however, that jurisdiction over such foreign ships shall not be exercised otherwise than according to the practice of the High Court in the exercise of jurisdiction over foreign ships.

(3) This Order also extends, in the cases and according to the conditions specified in this Order or in any decree of the Sultan, to Zanzibar subjects and to foreigners not otherwise subject to this Order.

6. If any question arises whether the Sovereign or Government of any country has agreed with His Majesty for or consented to the exercise of jurisdiction by His Majesty over all or any of his or their subjects or citizens or over persons under or claimed

as being under his or their protection, it shall be referred to the Secretary of State and a certificate under his hand and seal shall be conclusive on the question, and judicial notice shall be taken thereof

Provided that nothing herein shall be held to abridge or take away the jurisdiction of the court to determine whether any particular individual is or is not a subject or citizen of such Sovereign or Government or under or claimed as being under his or their protection

### PART III — *Administration*

\* \* \*

16 When any crime or offence has been committed in Zanzibar, in respect of which a court acting under this Order has jurisdiction, the British Resident may, as he shall see occasion, in His Majesty's name and on His Majesty's behalf, grant a pardon to any person subject to this Order who was an accomplice in such crime or offence and who shall give such information as shall lead to the conviction of the principal offender, or of any one of such offenders if more than one, and further may grant to any offender convicted in any court acting under this Order a pardon either free or subject to lawful conditions, or may remit or commute the whole or any part of the sentence passed on such offender or may respite the execution of such sentence for such period as he shall think fit and may remit any fines, penalties or forfeitures due or accrued to His Majesty

### PART IV — *Constitution of Courts*

17 (1) There shall be a court styled "His Britannic Majesty's High Court for Zanzibar," in this Order referred to also as the High Court and the Court

(2) Subject to the other provisions of this Order all His Majesty's jurisdiction criminal and civil in Zanzibar shall be and is hereby vested in the High Court

(3) There shall be as many judges of the Court as may from time to time be required, who shall respectively be appointed on His Majesty's behalf by the British Resident by an instrument under his hand and official seal in pursuance of instructions received from His Majesty through the Secretary of State

(4) The judges shall hold office during the pleasure of His Majesty

(5) When there are more judges than one the principal judge shall have such distinguishing title as the Secretary of State may approve

(6) Subject to any rules of court the principal judge shall make any such arrangements as he thinks fit for the distribution of the business of the Court.

\* \* \*

21. (1) Courts subordinate to the High Court and courts of special jurisdiction may be constituted by or under any order of the British Resident and shall exercise such jurisdiction as may be assigned to them by any such order.

(2) The High Court shall have within the district of any such subordinate court an original jurisdiction concurrent with the jurisdiction thereof.

(3) Provision may be made by order of the British Resident for the hearing and determining of appeals from every such court by the High Court or otherwise.

\* \* \*

#### PART V.—*General Law*

23. Subject to the other provisions of this Order, and to any treaties for the time being in force relating to Zanzibar, every court acting under this Order shall apply to all persons subject to this Order the decrees of the Sultan of Zanzibar, provided that they have been countersigned by the British Resident.

24. Subject to the other provisions of this Order, His Majesty's civil and criminal jurisdiction in Zanzibar shall be exercised in conformity with any Order of His Majesty in Council extending to Zanzibar and with the decrees of the Sultan countersigned by His Majesty's Agent and Consul-General for Zanzibar, if passed before, or by the British Resident if passed after, the 20th day of April, 1914, and subject thereto and so far as the same shall not extend or apply shall be exercised in conformity with the substance of the common law, the doctrines of equity and the statutes of general application in force in England on the 7th day of July, 1897, and with the powers vested in and according to the procedure and practice observed by and before courts of justice and justices of the peace in England according to their respective jurisdictions and authorities at that date. Provided always that the said common law doctrines of equity and statutes of general application shall be in force in Zanzibar so far only as the circumstances of the Protectorate and its inhabitants and the limits of His Majesty's jurisdiction permit, and subject to such qualifications as local circumstances render necessary.

\* \* \*



PART VI—*Criminal Matters*

28 The High Court shall have full criminal jurisdiction over all persons subject to this Order

29 (1) An appeal shall lie to His Majesty's Court of Appeal for Eastern Africa (in this Order referred to as "the Court of Appeal") from any finding, order or sentence recorded or passed by the High Court in the exercise of its original criminal jurisdiction provided that such finding, order or sentence is appealable under the Criminal Procedure Decree (Chapter 8 of the *Revised Edition of the Laws of the Zanzibar Protectorate* in force on the 31st day of December, 1934), or any decree relating to criminal procedure amending that decree or substituted therefor, and for the time being countersigned by the British Resident

(2) Save as aforesaid the Court of Appeal shall not have any power of revision or appeal over or from any finding, order or sentence recorded or passed by the High Court in the exercise of its criminal jurisdiction

30 The High Court may postpone the execution of the sentence pending the appeal, and may, if necessary, commit the person convicted to prison for safe custody, or detain him in prison for safe custody, or may admit him to bail, and may take security, by recognisance, deposit of money, or otherwise, for his payment of any fine

31 (1) Where an offender convicted before the High Court is sentenced to imprisonment, and the Court considers it expedient that the sentence shall be carried into effect elsewhere than in Zanzibar, the place shall be a place in the Kenya Colony and Protectorate, or a place in some part of His Majesty's dominions out of the United Kingdom, or in one of His Majesty's protectorates, provided that the Government thereof consents that offenders may be sent thither under this article

(2) The Court may, by warrant under the hand of a judge and the seal of the Court, cause the offender to be sent to such place as aforesaid, in order that the sentence may be there carried into effect accordingly

(3) The warrant shall be sufficient authority to any person to whom it is directed to receive and detain the person therein named, and to carry him to and deliver him up at the place named according to the warrant

32 (1) Where it is proved that there is reasonable ground to apprehend that a person subject to this Order is about to commit a breach of the public peace—or that the acts or conduct of a person subject to this Order are or is likely to produce or excite to a breach of the public peace—the High Court may, if it thinks fit, cause him

to be brought before it, and require him to give security to the satisfaction of the Court, to keep the peace, or for his future good behaviour, as the case may require.

(2) Where a person subject to this Order is convicted of an offence before the High Court, the Court may, if it thinks fit, in addition to or in lieu of any other sentence, require him to give security to the satisfaction of the Court for his future good behaviour, and for that purpose may (if need be) cause him to be brought before the Court.

(3) In either of the foregoing cases, if the person required to give security fails to do so, the High Court may order that he be deported from Zanzibar to such place and for such period as the Court directs.

\* \* \*

### PART VII.—*Civil Matters*

36. The High Court shall have full civil jurisdiction over all persons subject to this Order.

37. Unless otherwise expressly provided by any law for the time being in force in Zanzibar, an appeal shall lie from the decrees or any part of the decrees and from the orders of the High Court passed or made in the exercise of its original jurisdiction to the Court of Appeal.

\* \* \*

### PART VIII.—*Miscellaneous*

\* \* \*

42. (1) The British Resident may countersign any decrees made by the Sultan of Zanzibar in the exercise of his authority over his dominions, and such decrees shall thereupon become binding on all persons subject to this Order.

(2) The British Resident shall observe any general or special instructions of the Secretary of State with reference to the submission of any decrees issued or proposed to be issued by the Sultan to the Secretary of State before so countersigning them; but nothing in this provision shall affect the validity of a decree when countersigned by the British Resident.

(3) The British Resident shall, at the first available opportunity, transmit to the Secretary of State an authenticated copy of any decree of the Sultan countersigned by him.

(4) The British Resident may at any time publish a notice that his countersignature to any decree published by the Sultan is revoked, and such decree shall then cease to be binding on all persons subject to this Order accordingly.

\* \* \*

## 2a Order in Council, 1926.

\* \* \*

2 Every reference in the principal Order<sup>(1)</sup> to the decrees of the Sultan of Zanzibar or decrees made or issued or published by the Sultan of Zanzibar shall be deemed to include a reference to decrees enacted by His Highness the Sultan of Zanzibar by and with the advice and consent of the Legislative Council thereof

\* \* \*

## 3 Councils Decree, 1926 (as amended 1934 and 1936)

\* \* \*

PART I—*Executive Council*

3 The Executive Council shall consist of the following members, that is to say, His Highness the Sultan as president, the British Resident as vice president, the officers lawfully discharging the functions of Chief Secretary, of Attorney General, and of Treasurer, who shall be styled "*ex officio* members," and such other persons holding office in the Government as may from time to time be appointed by His Highness the Sultan by and with the advice of the British Resident and by an instrument under his hand and the Seal of the Protectorate, who shall be styled "official members" of the Executive Council

Provided that if any official member of the Executive Council shall cease to hold office under the Government his seat in the Council shall thereupon become vacant

\* \* \*

11 His Highness the Sultan is hereby pleased to declare that it shall be his pleasure and duty to attend and preside at all meetings of the Executive Council unless prevented by illness or other grave cause or unless in his judgment the matters to be decided can and may conveniently be disposed of in his absence, and in such case the British Resident or the senior member shall preside, and shall enjoy and exercise, while so presiding, all the rights powers and abilities assigned to His Highness the Sultan by the provisions of this decree

\* \* \*

PART II—*The Legislative Council*

20 The Legislative Council of the Protectorate shall consist of the British Resident as president, the persons for the time being lawfully discharging the functions of the Chief Secretary, of Attorney-General, and of Treasurer, who shall be styled "*ex officio* members" of the Legislative Council, and such other persons holding office in the Protectorate, as His Highness the Sultan,

acting by and with the advice of the British Resident, may from time to time appoint by an instrument under his hand and the Seal of the Protectorate, who shall be styled "official members" of the Legislative Council; and further of such other persons not exceeding six in number and not holding office in the Protectorate as His Highness the Sultan, acting by and with the advice of the British Resident, may from time to time appoint by an instrument under his hand and the Seal of the Protectorate, who shall be styled "unofficial members" of the Legislative Council;

Provided that if any official member of the Legislative Council shall cease to hold office under the Government his seat in the Council shall thereupon become vacant.

\* \* \*

28. The persons who shall from time to time compose the said Legislative Council shall, subject to the proviso hereinafter contained, have full power and authority to make laws to provide for the administration of justice, the raising of revenue, and generally for the peace, order and good government of the Protectorate and of all His Highness' subjects therein.

Provided always that all bills which shall have been passed by the Legislative Council, before taking effect and becoming law, shall be presented to His Highness the Sultan for the signification of his assent thereto which shall be testified by his signature and the Seal of the Protectorate. And His Highness the Sultan hereby reserves to himself, his heirs and successors, full power and authority and his and their undoubted right from time to time to declare or refuse his or their assent to any such bills as aforesaid as to him or them shall appear expedient.

29. His Highness the Sultan also reserves to himself, his heirs, and successors, his and their undoubted right from time to time to make all such laws or decrees as may appear to him or them necessary for the peace, order and good government of the Protectorate.

\* \* \*

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## NEW HEBRIDES CONDOMINIUM

1. Order in Council providing for the Exercise of His Majesty's Jurisdiction.—London, June 20, 1922.

Text in *State Papers*, Vol. CXVI, page 155.

2 Order in Council regarding the Interpretation of the Anglo-French Protocol, 1914—London, March 12, 1923

Text in *State Papers*, Vol CXVII, page 34

I Order in Council, 1922.

*At the Court at Buckingham Palace, the 20th day of June, 1922*

Present THE KING'S MOST EXCELLENT MAJESTY  
IN COUNCIL

*Whereas by treaty, grant, usage, sufferance, and other lawful means His Majesty has jurisdiction within the Islands of the Pacific Ocean known as "the New Hebrides," including the Banks Islands and Torres Islands*

*And whereas under and by virtue of "The Pacific Order in Council, 1893,"<sup>(1)</sup> provision was made for the exercise of His Majesty's jurisdiction within the said Islands*

*And whereas by "The Pacific Order in Council, 1907,"<sup>(2)</sup> the said Order was amended in certain respects*

*And whereas by an Order in Council bearing date the 2nd day of November, 1907,<sup>(3)</sup> and an Order in Council bearing date the 24th day of October, 1911<sup>(4)</sup> and entitled "The New Hebrides Order in Council, 1911," further provision was made for the exercise of His Majesty's jurisdiction within the said Islands*

*And whereas by a protocol signed at London on the 6th day of August 1914,<sup>(5)</sup> by representatives of the Government of His Majesty the King and the Government of the French Republic, it was amongst other things provided that the Islands known as "the New Hebrides" including the Banks and Torres Islands, should form a region of joint influence in which the subjects and citizens of Great Britain and France respectively should enjoy equal rights of residence, personal protection, and trade, each of the two said Powers retaining jurisdiction over its subjects and citizens, and neither exercising a separate control over the Group, and that the subjects or citizens of other Powers should enjoy the same rights, and should be subject to the same obligations as British subjects or French citizens*

*And whereas the said protocol of the 6th day of August, 1914, was on the 18th day of March, 1922, ratified by His Majesty's Government and the Government of the French Republic.*

<sup>(1)</sup> Page 629

<sup>(2)</sup> *Statutory Rules and Orders*, 1907, page 202

<sup>(3)</sup> *State Papers* Vol C page 119

<sup>(4)</sup> *Ibid*, Vol CIV, page 113

<sup>(5)</sup> *Ibid*, Vol CXIV, page 212

*And whereas it is expedient to provide for the exercise of His Majesty's jurisdiction within the said Islands in accordance with the terms of the said protocol:*

*Now, therefore, His Majesty, in virtue of the powers by "The Foreign Jurisdiction Act, 1890,"<sup>(1)</sup> and all other powers thereto him enabling, by and with the advice of His Majesty's Privy Council, is pleased to order and it is hereby ordered as follows:—*

\* \* \*

2. The protocol made the 6th day of August, 1914, between the Government of His Majesty the King and the Government of the French Republic in the terms set out in the schedule to this Order shall have the force of law and shall be binding upon all persons within the said Islands over whom His Majesty shall at any time have jurisdiction, and the provisions of this Order and of all laws and regulations made thereunder shall be read and construed subject to the terms of the said protocol in all respects.

3. His Majesty may appoint a High Commissioner for the New Hebrides. Appointments to the office of High Commissioner shall be made under the Royal Sign Manual and Signet. The High Commissioner shall hold office during His Majesty's pleasure.

4. The High Commissioner may, on His Majesty's behalf, exercise all powers and jurisdiction which His Majesty at any time before or after the date of this Order had, or may have within the New Hebrides, and to that end may take or cause to be taken all such measures and may do or cause to be done all such matters and things therein as are lawful and as in the interest of His Majesty's service he may think expedient, subject to such instructions as he may from time to time receive from His Majesty or through a Secretary of State.

5. Subject to the approval of a Secretary of State, the High Commissioner may appoint a Resident Commissioner and so many fit persons as, in the interest of His Majesty's service, he may think necessary to be Deputy Commissioners, Residents, Assistant Residents, judges, magistrates, or other officers, and may define from time to time the districts within which such officers shall respectively discharge their functions.

The Resident Commissioner and every other such officer shall hold office during His Majesty's pleasure and may exercise such powers and authorities as the High Commissioner may, with the approval of a Secretary of State, assign to him, subject nevertheless to such directions and instructions as the High Commissioner may from time to time think fit to give him. The appointment of such officers shall not abridge, alter or affect the right of the High Commissioner to execute and discharge all the powers and authorities hereby conferred upon him.

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<sup>(1)</sup> *State Papers*, Vol. LXXXII, page 656.

The High Commissioner may, subject to confirmation by a Secretary of State, remove any officer so appointed

6 (1) It shall be lawful for the High Commissioner for the New Hebrides or the Resident Commissioner in the New Hebrides to make, alter, and revoke any regulations (to be called "King's Regulations") which may seem desirable to him for the peace, order, and good government of all persons who are British subjects or who, under the said protocol of the 6th day of August, 1914, or otherwise, are subject to the jurisdiction of His Majesty, and such regulations shall, on publication in the said Islands, be binding on all persons, being British subjects or otherwise subject to the jurisdiction of His Majesty

(2) Any regulation made by the Resident Commissioner in the New Hebrides may be disallowed by the High Commissioner for the New Hebrides, and upon such disallowance being published in the said Islands the said regulation shall become void and cease to have effect from the date of the publication without prejudice to anything lawfully done thereunder

(3) Any regulation made by the High Commissioner for the New Hebrides or by the Resident Commissioner in the New Hebrides may be disallowed by a Secretary of State, and upon such disallowance being published as aforesaid in the said Islands, the said regulation shall become void and cease to have effect from the date of the publication, without prejudice to anything lawfully done thereunder

\* \* \*

10 Subject to the provisions of the aforesaid protocol and of this Order, the Order of Her late Majesty Queen Victoria known as "The Pacific Order in Council, 1893," as amended by "The Pacific Order in Council, 1907," shall (save and except article 109 of the said Order of 1893) apply to the New Hebrides as if the same was herein incorporated and shall be binding upon all persons over whom His Majesty has jurisdiction within the said Islands. The Order of His late Majesty King Edward VII in Council known as "The Pacific Islands Civil Marriages Order in Council, 1907,"<sup>(1)</sup> shall in like manner apply to and have effect within the New Hebrides

\* \* \*

### *Schedule*

Protocol respecting the New Hebrides signed at London on August 6, 1914, by representatives of the British and French Governments

Text in *State Papers*, Vol CXIV, page 212

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(1) *Statutory Rules and Orders* 1907, page 203

## 2. Order in Council, 1923.

\* \* \*

1. The protocol made the 6th day of August, 1914,<sup>(1)</sup> between the Government of His Majesty the King and the Government of the French Republic in the terms set out in the schedule to the principal Order, as interpreted in accordance with the agreement to that effect hereinbefore recited between the said Governments, shall have the force of law and shall be binding upon all such persons as are referred to in article 2 of the principal Order, and the principal Order shall be read and construed accordingly.

\* \* \*

*Schedule*

Notes exchanged at Paris, December 16/26, 1922.

Text in *State Papers*, Vol. CXVII, page 35.

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## SUDAN CONDOMINIUM

Agreement between Great Britain and Egypt for the Administration—Cairo, January 19, 1899.

Text in *State Papers*, Vol. XCI, page 19.

*Amendment*

## AGREEMENT:

Cairo, July 10, 1899 .. .. Text in *State Papers*, Vol. XCI, page 21.

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<sup>(1)</sup> *State Papers*, Vol. CXIV, page 212.



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